# United States Circuit Court of Appeals

## TENTH CIRCUIT

## No. 1558

DAN B. SHIELDS, Individually and as United States Attorney for the District of Utah, and the INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

THE UTAH IDAHO CENTRAL RAILROAD COMPANY, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED APRIL 26, 1937.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH—CENTRAL DIVISION

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE TILLMAN D. JOHNSON, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

THE UTAH IDAHO CENTRAL RAILROAD COMPANY, a Corporation, COMPLAINANT,

vs.

DAN B. SHIELDS, Individually and as United States Attorney for the District of Utah, DEFENDANT, and INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT.

No. 12924, Equity.

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Bill of Complaint for Injunction and Petition for Declaratory Judgment

Your petitioner, The Utah Idaho Central Railroad Company, suing herein also for its officers and agents, complaining of and against Dan B. Shields, individually and as United States Attorney for the District of Utah, respectfully represents:

1. That plaintiff The Utah Idaho Central Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, of which it is a citizen, qualified under the laws of the States of Utah and Idaho to do business in said States, with its principal office and place of business located in Ogden City, Weber County, State of Utah; that the defendant Dan B. Shields resides in Salt Lake City, Salt Lake County, State of Utah, in the District of Utah, Central Division, and is the United States Attorney duly appointed, qualified and acting in and for said District of Utah, and he is sued herein individually and as such United States Attorney.

2. That this is a suit in equity of a civil nature, arising under the laws of the United States, and presents and in-

volves an actual controversy between the plaintiff and the defendant, and the matter in controversy as to the plaintiff, exclusive of interest and costs, exceeds the sum of $3,000.00, as will be hereinafter more particularly alleged, and relates to an Act of Congress regulating Interstate Commerce, to wit: "An Act to amend the Railway Labor Act, approved June 21, 1934, entitled: 'An Act to amend the Railway Labor Act, approved May 20, 1926, and to provide for the prompt disposition of disputes between carriers and their employes'", hereinafter called the Railway Labor Act.

3. That plaintiff brings this suit to prevent irreparable injury and damage to it and its business and property used in the transportation of persons and property and to prevent and restrain the defendant individually and in his official capacity from the threatened enforcement of fines and penalties against the plaintiff and its officers and agents, for alleged violation of any of the provisions of the Railway Labor Act, and for any alleged failure or refusal on their part respectively to conform to the provisions of said Act.

4. That the Utah Idaho Central Railroad Company is
3 engaged in the business of operating as a common carrier an electric interurban line of railroad between Ogden City in the County of Weber, State of Utah, and Preston, in the County of Franklin, State of Idaho, for the transportation of passengers, freight, express and baggage between said terminal points and intermediate points, and is engaged also in the operation as a common carrier of a bus line upon the State and County highways between said terminal points and all intermediate points, substantially *parallelling* said line of interurban electric railroad, for the transportation of passengers, baggage and express.

5. That prior to the year 1914, there was operated in the City of Ogden, in Weber County, State of Utah, a street car system of horse drawn cars, and also an interurban line running from the North City limits of Ogden City to Hot Springs, Utah, a distance of approximately ten miles. That these properties prior to the year 1914 were acquired by Ogden Rapid Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, and electrified as an electric interurban railroad and extended to Brigham City, Box Elder County, State of Utah; that prior to said year 1914, there was operated in the City of Logan a street car

system which prior to said year had been electrified and extended as an interurban railroad northward to Smithfield, Utah, and southward to Wellsville, Utah, which said interurban electric railroad was owned and operated by Logan Rapid Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Utah; that these city and interurban railroads had been constructed by and were being operated by a group of citizens of northern Utah, interested in the Agricultural, industrial and social development of northern Utah and that portion of the State of Idaho which constitutes a part of Cache Valley, which is for the most part located in Utah, and who were desirous of furnishing to that territory as a whole a transportation system which would better serve its needs than the steam
4 railroad operating therein, namely, the Oregon Short Line Railroad, and to that end determined to consolidate the two electric interurban properties above referred to, and accordingly in the year 1914 the said Ogden Rapid Transit Company and said Logan Rapid Transit Company were under the laws of the State of Utah consolidated into a corporation known as Ogden Logan & Idaho Railway Company, which continued to own, control and operate the properties formerly owned and operated by its constituent companies and in precisely the same and identical manner in which it had been operated by its constituent companies, and rebuild that portion of the line running northward from Ogden City to Brigham City, and constructed a new electric line from Brigham City north over the Collinston divide, thus connecting the interurban lines formerly operated by its constituent companies, and also constructed a new line from the northern terminus of the line of said Logan Rapid Transit Company to Preston, Idaho, the principal city in the Northern part of Cache Valley, a distance of six miles north of the Utah line; that thereafter said Ogden Logan & Idaho Railway Company, which by an amendment of its articles of incorporation changed its corporate name to Utah Idaho Central Railroad Company, continued to own, control and operate the electric street car system in the City of Ogden, the electric street car system in the City of Logan, and the interurban electric line, which had been developed out of the electric interurban properties of its constituent companies, in precisely the same manner they had been operated from the time of their construction, until the year 1920, when the city street car system in Ogden City was segregated

from the interurban operations of the company and transferred to the Utah Rapid Transit Company; that the operation of the interurban line from Ogden, Utah, to Preston, Idaho, and the operation of the street car system in Logan City remained with the Utah Idaho Central Railroad Company until the year 1926, when that company went through a receivership in this court, which resulted in the properties being acquired by the plaintiff The Utah Idaho Central Railroad Company, and the same have since been owned, controlled and operated by said company in precisely the same manner they had been operated theretofore since their construction, except that the plaintiff company has instituted a bus operation in lieu of the street car lines in Logan City and has instituted a bus system over the State and County highways substantially parallelling its rail line from Ogden, Utah, to Preston, Idaho, for the transportation of passengers, baggage and express.

6. That the resources of the territory served by plaintiff north of Ogden to the Collinston divide, being the northern part of the Salt Lake Valley, and the resources of the Cache Valley hereinbefore referred to are wholly agricultural in character and the only industrial development of which the territory has been or will be capable is the construction and operation of processing plants to enable the agricultural products of the territory to reach the outside market, such as beet sugar factories, vegetable packing plants, milk condensing plants, etc.; that from the time of the construction of the interurban line of railroad heretofore refered to and now owned, controlled and operated by the plaintiff, this industrial development has been fostered by it by collecting the raw products from the fields and delivering them to the processing plants located on its line, and delivering to those plants the materials necessary for such processing from outside the territory served by the plaintiff, such as coal, lime, etc., by transporting by means of its interurban line the processed products from the processing plants and delivering them to the steam railroads for transportation to the outside market; that by means of its interchange with steam railroads, wholly as an initiating or reciving carrier, without discrimination as to preference as to which steam railroad is used, plaintiff has also fostered the agricultural development of the territory by delivering to the farms such needed merchandise from the outside, and delivering from said farms to the outside market such agricultural products as could be marketed without being pro-

ceased; plaintiff has likewise fostered the social development of the territory by the transportation to and from the farms to the larger communities of the people inhabiting the territory, and especially in the transportation of the school children, thus enabling such schools to be restricted to the larger communities so as to be fully equipped to serve their purposes and yet serving all of the children of the territory equally.

7. To meet these needs of the people of the territory,
6 agricultural, industrial and social, that type of transportation operation which is peculiarly the electric interurban type was and is necessary, namely, short speedy trains operated at frequent intervals, making frequent stops, in many instances where no agents are maintained, for the transportation of both passengers and freight, practically to and from the individual farms, and to and from the processing plants and community centers, and to and from the outside world, to enable the products of the soil to reach their markets either as raw or as processed products, and the products from the outside to reach the farms and processing plants and enable the people of the territory to keep in touch with the outside world.

8. That in harmony with said purposes as above outlined, the interurban line of the plaintiff was constructed and has ever since been maintained and operated, and its physical characteristics are such as to limit its operations to that of an interurban railway; that all of its physical elements, motive power, equipment, track construction, length of spur and sidings, curvature and grade are co-ordinated into an integral whole, which necessitates an operation which is peculiar to interurban electric railroads and that continuously since its construction it has been so operated and that without a complete change of all of its physical elements it could not operate except as an interurban electric railroad and could not be operated as ordinary commercial steam railroads are commonly operated.

9. That Section 1 of the Railway Labor Act defines the term "carrier" as follows:

"Section 1. When used in this Act and for the purposes of this Act:—

"First. The term 'carrier' includes any express com-
7 pany, sleeping-car company, carrier by railroad subject to the Interstate Commerce Act, and any company which

is directly or indirectly owner or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any carrier, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier'; Provided, however, that the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operated as a part of a general steam railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

10. That plaintiff is an electric interurban railway, as said term is used in and within the purview of said Railway Labor Act; that it is not operated as part of a general steam railroad system of transportation; that none of its stock or securities are owned by any general steam railroad system of transportation, or by any steam railroad company, and no general steam railroad system of transportation, and no steam railroad company, nor any of its officers and agents, have any control of or voice whatever in its management or operation, and plaintiff is exempt from any and all provisions of the said Railway Labor Act.

11. That under the Interstate Commerce Act, Railway Mail Pay Act and other Acts of Congress administered by the Interstate Commerce Commission, the Commission has given the plaintiff and other electric railways a different designation and classification from that given common carriers by railroad subject to the Railway Labor Act, and the Commission as well as various courts and other administrative agencies, State and Federal, have designated plaintiff and similar electric railways as interurban electric railways.

12. That in said Railway Labor Act certain terms are defined, as such terms are therein used, and certain omissions

and acts of commission on the part of the carrier subject thereto, its agents and officers, are made penal offenses, involving heavy fines or imprisonment, or both; that exact copies of the sixth paragraph of Section 1, the third, fourth,
8 fifth, seventh, eighth and tenth paragraphs of Section 2, and Section 6 thereof are hereto attached, marked Exhibit A, hereby referred to and by this reference made a part hereof.

By Section 4, First, of the Railway Labor Act, there is created a board known as the National Mediation Board, which is given certain powers and duties in connection with the administration of said Act. Among such duties and powers is the duty to prescribe the form of notice to carrier employes, as set out in Section 2, Eighth, thereof; that the Mediation Board has heretofore prescribed the form of notice provided for in the eighth paragraph of Section 2 of the Act and ordered that it be posted as therein specified, thereby demanding that all employes be thereby notified that all disputes between the carrier and them will be handled in accordance with the provisions of said Act; that plaintiff has not complied with said order; that if plaintiff continues to fail to comply with said order and otherwise fails to comply with the provisions of said Act, it will subject itself to prosecutions for the penalties hereinbefore set out, notwithstanding that as an interurban electric railroad it is not subject to the provisions thereof; that if it does comply with said order and with the other provisions of said Act, it thereby admits that it is subject to the provisions thereof and thereby voluntarily submits itself to the provisions thereof, notwithstanding it is not subject thereto, and such compliance on the part of the plaintiff, notwithstanding it is not subject thereto, will subject it to immediate and irreparable injury and damage, in that such compliance will unlawfully deprive plaintiff of the liberty of contract and it will be compelled to negotiate with its trainmen and other employes, through a representative or representatives of their own choosing, regardless of who such representative or representatives may be, and regardless of whether such representative or representatives are or are not employes of the plaintiff, and in that such compliance will result in demands for increase of wages on the part of employes, and demands for rules and working conditions with respect
9 thereto that the plaintiff is unable to grant, because its financial condition will not permit it so to do without

immediately impairing and ultimately destroying its ability to continue to operate and to serve the public in the manner in which it has served it in the past, and this notwithstanding plaintiff has never had any disputes with its employes which have not been amicably adjusted, and notwithstanding it has continuously operated under contracts with organizations of its employes which are absolutely independent of it and in no wise under its control, as to rates of pay, rules and working conditions, because plaintiff's employes will be influenced to abandon their present organizations and to join those organizations of employes on transcontinental steam railroads throughout the country, on the promise that they will receive the higher or so-called steam railroad standard wages and the different or so-called standard rules and working conditions prevailing thereon, which said organizations represent the employes of said transcontinental steam railroads, and will then demand such higher wages and such different rules and working conditions which prevail on said transcontinental steam railroads, which said wages and rules and working conditions are unwarranted and inapplicable to plaintiff, and if plaintiff refused to pay such wages and to adopt such rules and working conditions labor disputes and strikes will result, which will inflict such financial losses upon the plaintiff that it will be unable to continue to operate and to serve the public in the manner in which it has been doing in the past, and in that under Section 3 of the Act disputes with reference to interpretation of agreements between plaintiff and its employes, and as to grievances of plaintiff's employes against it, and as to the discharge of any of its employes, will have to be submitted to the National Railroad Adjustment Boards which have been created under said Act without the plaintiff having any part in the selection of the members thereof.

13. That the defendant Dan B. Shields, United States Attorney for the District of Utah, is charged by law with the enforcement of said Act and with the duty of filing suits and prosecuting plaintiff and its officers and agents under the direction of the Attorney General, for violations of said paragraph of said Section of the Act; that the defendant has threatened to file suits and prosecute the plaintiff and its officers and agents for the failure upon the part of the plaintiff to comply with the Railway Labor Act, and that unless the relief herein prayed for is granted he will do so; that under

the circumstances herein alleged plaintiff is without adequate remedy at law and that it is entitled as of right to immunity from the severe and cumulative penalties pending an orderly and judicial test of the application of said Act to plaintiff, and those particular portions thereof aforesaid, and the question of whether or not it is subject to the provisions of said Act; and in order that such test may be initiated and determined judicially, it should be protected against any prosecution or prosecutions for violation of said penal provisions of said Act, or any of them, pending such judicial determination.

Wherefore plaintiff prays:

1. That this court take jurisdiction of this case and cause appropriate process to issue against the defendant Dan B. Shields, United States Attorney for the District of Utah, and require him to answer this bill of complaint, as required by the rules of this court and as required by law.

2. That pending final hearing herein, the court cause to be issued and served upon the defendant an order to show cause why a temporary injunction should not issue against said defendant and upon the hearing thereof that the court issue a temporary injunction in accordance with the rules of this court enjoining and restraining the defendant from initiating, from prosecuting, and from initiating and prosecuting any suit or suits against the plaintiff, its officers and agents, or any of them, based upon the alleged violation by them, or any of them, of any of the provisions of the Railway Labor Act, or based upon the alleged violation of Section 2 thereof, or either of them;
that that upon final hearing said injunction be made
11 final and perpetual; that upon final hearing of this cause,
the court shall order, adjudge and decree, pursuant to the provisions of the Federal Declaratory Judgment Act as amended, that the plaintiff is an electric interurban railroad not operating as a part of a general steam railrod system of transportation, and as such is not subject to the provisions of the Railway Labor Act.

3. That plaintiff shall have such other, further and general or special relief as the nature of the case may require and the court may deem just and proper in the premises.

THE UTAH IDAHO CENTRAL RAILROAD COMPANY,

By P. H. Mulcahy, Its General Manager, Plaintiff.

J. H. DeVine, J. A. Howell, David L. Stine, Attorneys and Solicitors for Plaintiff, 625 Eccles Building, Ogden, Utah.
(Duly verified)

Filed in United States District Court, District of Utah June 24, 1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

Exhibit A

Section 1.

12

* * *

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

* * *

Section 2.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth: Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor repre-

sentative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, that nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carriers shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

* * *

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties regardless of any other express or implied agreements between them.

13

* * *

Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the 3rd, 4th, 5th,

7th or 8th paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than 6 months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this Act, shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal Act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

* * *

Section 6. Carriers and representatives of the employees shall give at least 30 days' written notice of an intended change in agreement affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within 10 days after the receipt of said notice, and said time shall be within the 30 days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conference without request for or proffer of the services of the Mediation Board.

**Order to Show Cause Upon Application for Temporary Injunction and Setting Same for Hearing**

Whereas, in the above entitled cause, a verified bill of complaint for injunction and petition for declaratory judgment has been filed; and

Whereas, it appears from said bill of complaint and petition that there is danger of immediate and irreparable injury, loss or damage being caused to the plaintiff; and

Whereas, said bill of complaint prays that a temporary injunction be granted to the plaintiff against the defendant, after notice and hearing, enjoining the defendant until the final hearing of said cause or until the further order of this court from initiating and prosecuting any suit or suits against the plaintiff, its officers or agents, or any of them, based upon the alleged violation by them, or any of them, of any provisions of an Act of Congress regulating Interstate Commerce, entitled "An Act to amend the Railway Labor Act, approved June 21, 1934, entitled: 'An Act to amend the Railway Labor Act, approved May 20, 1926, and to provide for the prompt disposition of disputes between carriers and their employes'", commonly known as the Railway Labor Act, or based upon the alleged violation of Section 2 thereof, or either of them:

Now, therefore, it is ordered that this cause be set down for hearing upon the application for a temporary injunction, as hereinbefore set forth, at the court room of this court, at the Federal Building, in Salt Lake City, Salt Lake County, State of Utah, on the 27th day of June, 1936, at the hour of 10:00 A. M. and the defendant is hereby notified of said hearing.

Dated: June 24, 1936.

By the Court,

TILLMAN D. JOHNSON, Judge.

Filed in the United States District Court, District of Utah June 24, 1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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**Minute Entry—June 27, 1936.**

At this 27th day of June, 1936, plaintiff appearing by J. A. Howell, its solicitor, and defendant by Scott M.

Matheron, his attorney, and hearing on order to show cause heretofore filed was continued to August 29, 1936, with the understanding that the Government take no action to collect taxes or assess penalties until order to show cause has been disposed of.

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Return To Rule To Show Cause

The Defendant for a return to the rule to show cause herein states that he is the United States Attorney for the District of Utah, that he has made no threats to prosecute any proceedings against the plaintiff, and that the Attorney General of the United States has not requested him to prosecute the plaintiff for alleged violations of the Railway Labor Act.

Defendant states that the Bill of Complaint fails to state a cause of action against him entitling plaintiff to a temporary injunction for the following reasons:

(1) The court is without jurisdiction to entertain plaintiff's Bill of Complaint as an original action to determine the status of the plaintiff's line because the Congress, within its competency, has conferred such jurisdiction upon the Interstate Commerce Commission;

(2) The Bill of Complaint contains no allegation that the plaintiff has exhausted its administrative remedy under the Railway Labor Act by having its status determined by the Interstate Commerce Commision;

(3) The plaintiff's suit is premature in that the Bill of Complaint does not contain an allegation that the Attorney General of the United States had directed the defendant to prosecute any proceedings against the plaintiff;

(4) The court has jurisdiction only to review a record made before the Interstate Commerce Commission, wherein the status of an electrically operated interstate carrier is determined by said Commission, in order to ascertain whether or not a determination by the Commission is based upon evidence, is arbitrary, capricious or unreasonable;

(5) The Bill of Complaint does not state facts entit-
16 ling the plaintiff to the relief demanded.

Having fully shown cause why a temporary injunction

should not be granted herein the Defendant prays that the application of plaintiff therefor should be denied.

DAN B. SHIELDS,
Individually and as United States Attorney for the District of Utah.

LEO F. TIERNEY,
Special Assistant to the Attorney General.

JOHN DICKINSON,
Assistant Attorney General.

(Duly verified)

Filed in United States District Court, District of Utah Aug. 18, 1936 W. B. Wilson, Clerk By M. S. Sturdevant, Deputy.

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Motion To Dismiss Bill of Complaint

Comes now the Defendant and respectfully moves the Court to dismiss the Bill of Complaint herein against him for the following reasons:

(1) The court is without jurisdiction to entertain plaintiff's Bill of Complaint as an original action to determine the status of the plaintiff's line because the Congress, within its competency, has conferred such jurisdiction upon the Interstate Commerce Commission;

(2) The Bill of Complaint contains no allegation that the plaintiff has exhausted its administrative remedy under the Railway Labor Act by having its status determined by the Interstate Commerce Commission;

(3) The plaitiff's suit is premature in that the Bill of Complaint does not contain an allegation that the Attorney Genral of the United States had directed the defendant to prosecute any procedings against the plaintiff;

17

(4) The Court has jurisdiction only to review a record made before the Interstate Commerce Commission, wherein the status of an electrically operated interstate carrier is determined by said Commission, in order to ascertain whether or not a determination by the Commission is based upon evidence, is arbitrary, capricious or unreasonable;

(5) The Bill of Complaint does not state facts entitling the plaintiff to the relief demanded.

LEO F. TIERNEY,
Special Assistant to the Attorney General.

JOHN DICKINSON,
Assistant Attorney General.

Filed in the United States District Court, District of Utah August 27, 1936 W. B. Wilson, Clerk By M. S. Sturdevant, Deputy.

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Affidavit of Service

The United States of America, District of Utah, Central Division. ss.

Winnie Esterak, being first duly sworn upon her oath, deposes and says:

That she is a Clerk in the Office of the United States Attorney for the District of Utah; that on August 18, 1936, she served Return To Rule To Show Cause and Motion to Dismiss Bill of Complaint in the above entitled cause on The Utah Idaho Central Railroad Company, a corporation, by placing a true copy of said Return To Rule To Show Cause and Motion to Dismiss Bill of Complaint in a franked envelope of the United States addressed to Counsel for said The Utah Idaho Central Railroad Company as follows:

DeVine, Howell & Stine,
18 625 Eccles Building,
Ogden, Utah;

and deposited the said envelope in the United States Post Office at Salt Lake City, Utah, for mailing and delivery to said Counsel for Plaintiff in the above entitled cause.

(Seal) WINNIE ESTERAK.

Subscribed and sworn to before me this 18th day of August, A. D. 1936 W. B. Wilson, Clerk U. S. District Court for the District of Utah, By M. S. Sturdevant, Deputy.

Filed in United States District Court, District of Utah Aug. 18, 1936 W. B. Wilson, Clerk, By M. S. Sturdevant, Deputy

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Minute Entry—August 29, 1936

At this 29th day of August, 1936, plaintiff appearing by J. A. Howell and D. L. Stine, its solicitors, and defendant by Scott M. Matheson, Assistant United States Attorney, and Leo F. Tierney, Special Assistant to the Attorney General of the United States, his solicitors, and this cause came on for hearing on Rule to show cause and motion to dismiss heretofore filed and it is ordered by the Court that the plaintiff have ten days in which to amend its bill; that defendant be given ten days thereafter in which to renew its motion to dismiss its bill of complaint or otherwise further plead; that the plaintiff's application for temporary injunction be continued to next rule day.

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Amended Bill of Complaint for Injunction and Petition for Declaratory Judgment

To the Honorable Tillman D. Johnson, Judge of said Court:

Your petitioner, The Utah Idaho Central Railroad Company, by leave of court first had and obtained, makes and files this amended bill of complaint for injunction and petition for declaratory judgment, and suing herein also for its officers and agents, complaining of and against Dan B. Shields, individually and as United States attorney for the District of Utah, defendant, respectfully represents:

1. That plaintiff The Utah Idaho Central Railroad
19 Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, of which it is a citizen, qualified under the laws of the State of Utah and Idaho to do business in said States, with its principal office and place of business located in Ogden City, Weber County, State of Utah; that the defendant Dan B. Shields resides in Salt Lake City, Salt Lake County, State of Utah, in the District of Utah, Central Division and is the United States Attorney duly appointed, qualified and acting in and for said District of Utah, and he is sued herein individually and as such United States Attorney.

2. That this is a suit in equity of a civil nature, arising under the laws of the United States, and presents and involves an actual controversy between the plaintiff and the defendant, and the matter in controversy as to the plaintiff, exclusive of

interest and costs, exceeds the sum of $3,000.00, as will be hereinafter more particularly alleged, and relates to an Act of Congress regulating Interstate Commerce, to-wit, "An Act to amend the Railway Labor Act, approved June 21, 1934, entitled: 'An Act to amend the Railway Labor Act, approved May 20, 1926, and to provide for the prompt disposition of disputes between carriers and their employes'", hereinafter called the Railway Labor Act.

3. That plaintiff brings this suit to prevent irreparable injury and damage to it and its business and property used in the transportation of persons and property and to prevent and restrain the defendant individually and in his official capacity from the threatened enforcement of fines and penalties against the plaintiff and its officers and agents for alleged violation of any of the provisions of the Railway Labor Act and for any alleged failure or refusal on their part respectively to conform to the provisions of said Act.

4. That The Utah Idaho Central Railroad Company is engaged in the business of operating as a common carrier an electric interurban line of railroad between Ogden City in the County of Weber, State of Utah, and Preston, in the County of Franklin, State of Idaho, for the transportation of passengers, freight, express and baggage between said terminal points and intermediate points, and is engaged also in the operation as a common carrier of a bus line upon the State and County highways between said terminal points and all intermediate points substantially parallelling said line of interurban electric railroad for the transportation of passengers, baggage and express.

5. That prior to the year 1914, there was operated in the City of Ogden, in Weber County, State of Utah a street car system and also an interurban line running from the north city limits of Ogden City to Hot Springs, Utah, a distance of approximately ten miles. That these properties prior to the year 1914 were acquired by Ogden Rapid Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, and electrified as an electric interurban railroad and extended to Brigham City, Box Elder County, State of Utah; that prior to said year 1914, there was operated in the City of Logan a street car system which prior to said year had been electrified and extended as an interurban

railroad northward to Smithfield, Utah, and southward to Wellsville, Utah, which said interurban railroad was owned and operated by Logan Rapid Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Utah; that these city and interurban railroads had been constructed by and were being operated by a group of citizens of northern Utah, interested in the agricultural, industrial and social development of northern Utah and that portion of the State of Idaho which constitutes a part of Cache Valley, which is for the most part located in Utah, and who were desirous of furnishing to that territory as a whole a transportation system which would better serve its needs than the steam railroad operating therein, namely, the Orgeon Short Line Railroad, and to that end determined to consolidate the two electric interurban properties above referred to, and accordingly in the year 1914 the said Ogden Rapid Transit Company were under
21 the laws of Utah consolidated into a corporation known as Ogden, Logan & Idaho Railway Company, which continued to own, control and operate the properties formerly owned and operated by its constituent companies and in precisely the same and identical manner in which it had been operated by its constituent companies, and rebuilt that portion of the line running northward from Ogden City to Brigham City, and constructed a new electric line from Brigham City north over the Collinston divide, thus connecting the interurban lines formerly operated by its constituent companies, and also constructed a new line from the northern terminus of the line of said Logan Rapid Transit Company to Preston, Idaho, the principal city in the northern part of Cache Valley, a distance of six miles north of the Utah Line; that thereafter said Ogden Logan & Idaho Railway Company, which by an amendment of its articles of incorporation changed its corporate name to Utah Idaho Central Railroad Company, continued to own, control and operate the electric street car system in the city of Ogden, the electric street car system in the City of Logan, and the interurban electric line, which had been developed out of the electric interurban properties of its constituent companies, in precisely the same manner they had been operated from the time of their construction, until the year 1920, when the city street car system in Ogden City was segregated from the interurban operations of the company and transferred to the Utah Rapid Transit Company; that the operation of the interurban line from Ogden, Utah, to Preston,

Idaho, and the operation of the street car system in Logan City remained with the Utah Idaho Central Railroad Company until the year 1926, when that company went through a receivership in this court, which resulted in the properties being acquired by the plaintiff The Utah Idaho Central Railroad Company, and the same have since been owned, controlled and operated by said company in precisely the same manner they had been operated theretofore since their construction, except that the plaintiff company has instituted a bus operation in lieu of the street car lines in Logan City and has instituted a bus system over the State and County highways substantially paral-
22 lelling its rail line from Ogden, Utah to Preston, Idaho, for the transportation of passengers, baggage and express.

6. That the resources of the territory served by plaintiff north of Ogden to the Collinston divide, being the northern part of the Salt Lake Valley, and the resources of the Cache Valley hereinbefore referred to are wholly agricultural in character and the only industrial development of which the territory has been or will be capable is the construction and operation of processing plants to enable the agricultural products of the territory to reach the outside market, such as beet sugar factories, vegetable packing plants, milk condensing plants, etc.; that from the time of the construction of the interurban line of railroad heretofore referred to and now owned, controlled and operated by the plaintiff, this industrial development has been fostered by it by collecting the raw products from the fields and delivering them to the processing plants located on its line, and delivering to those plants the materials necessary for such processing from outside the territory served by the plaintiff, such as coal, lime, etc., by transporting by means of its interurban line the processed products from the processing plants and delivering them to the steam railroads for transportation to the outside markets; that by means of its interchange with steam railroads wholly as an initiating or receiving carrier without discrimination as to preference as to which steam railroad is used, plaintiff has also fostered the agricultural development of the territory by delivering to the farms such needed merchandise from the outside, and delivering from said farms to the outside market such agricultural products as could be marketed without being processed; plaintiff has likewise fostered the social development of the territory by

the transportation to and from the farms to the larger communities of the people inhabiting the territory, and especially in the transportation of the school children, thus enabling such schools to be restricted to the larger communities so as to be fully equipped to serve their purposes and yet serving all of the children of the territory equally.

7. To meet these needs of the people of the territory,
23 agricultural, industrial and social, that type of transportation operation which is peculiarly the electric interurban type was and is necessary, namely, short speedy trains operated at frequent intervals, making frequent stops, in many instances where no agents are maintained, for the transportation of both passengers and freight, practically to and from the individual farms, and to and from the processing plants and community centers, and to and from the outside world, to enable the products of the soil to reach their markets either as raw or as processed products, and the products from the outside to reach the farms and processing plants and enable the people of the territory to keep in touch with the outside world.

8. That in harmony with said purposes as above outlined, the interurban line of the plaintiff was constructed and has ever since been maintained and operated, and its physical characteristics are such as to limit its operations to that of an interurban railway; that all of its physical elements, motive power, equipment, track construction, length of spur and sidings, curvature and grades are co-ordinated into an integral whole, which necessitates an operation which is peculiar to interurban electric railroads and that continuously since its construction it has been so operated and that without a complete change of all of its physical elements it could not operate except as an interurban electric railroad and could not be operated as ordinary commercial steam railroads are commonly operated.

9. That Section 1 of the Railway Labor Act defines the term "carrier" as follows:

"Section 1. When used in this Act and for the purposes of this Act—

"First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad subject to the Interstate Commerce Act, and any company which is directly or

indirectly owned or controlled by or under common control with any carrier by railroad and which operated any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by rail-
24 road, and any carrier, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier'; Provided, however, that the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operated as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Inter-State Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

10. The plaintiff is an electric interurban railway, as said term is used in and within the purview of said Railway Labor Act; that it is not operated as part of a general steam railroad system of transportation; that none of its stock or securities are owned by any general steam railroad system of transportation, or by any steam railroad company, and no general steam railroad system of transportation, and no steam railroad company, nor any of its officers or agents, have any control of or voice whatever in its management or operation, and plaintiff is exempt from any and all provisions of the said Railway Labor Act.

11. That under the Interstate Commerce Act, Railway Mail Pay Act and other Acts of Congress administered by the Interstate Commerce Commission, the Commission has given the plaintiff and other electric railways a different designation and classification from that given common carriers by railroad subject to the Railway Labor Act, and the Commission as well as various courts and other administrative agencies, State and Federal, have designated plaintiff and similar electric railways as interurban electric railways.

12. That in said Railway Labor Act certain terms are defined, as such terms are therein used, and certain omissions

and acts of commission on the part of the carrier subject thereto, its agents and officers, are made penal offenses, involving heavy fines or imprisonment, or both; that exact copies of the sixth paragraph of Section 1, the third, fourth, fifth, seventh, eighth and tenth paragraphs of Section 2, and Section 6 thereof are hereto attached, marked Exhibit A, hereby referred to and by this reference made a part hereof.

By Section 4, Part of the Railway Labor Act, there is created a board known as the National Mediation Board, which is given certain powers and duties in connection with the administration of said Act. Among such duties and powers is the duty to prescribe the form of notice to carrier employes, as set out in Section 2, Eighth, thereof; that the Mediation Board has heretofore prescribed the form of notice provided for in the eighth paragraph of Section 2 of the Act and ordered that it be posted as therein specified, thereby demanding that all employes be thereby notified that all disputes between the carrier and them will be handled in accordance with the provisions of said Act; that plaintiff has not complied with said order; that if plaintiff continues to fail to comply with said order and otherwise fails to comply with the provisions of said Act, it will subject itself to prosecutions for the penalties hereinbefore set out, notwithstanding that as an interurban electric railroad it is not subject to the provisions thereof; that if it does comply with said order and with the other provisions of said Act, it thereby admits that it is subject to the provisions thereof and thereby voluntarily submits itself to the provisions thereof, notwithstanding it is not subject thereto, and such compliance on the part of the plaintiff, notwithstanding it is not subject thereto, will subject it to immediate and irreparable injury and damage, in that such compliance will unlawfully deprive plaintiff of the liberty of contract and it will be compelled to negotiate with its trainmen and other employes, through a representative or representatives of their own choosing, regardless of who such representative or representatives may be, and regardless of whether such representative or representatives are or are not employes of the plaintiff, and in that such compliance will result in demands for increase of wages on the part of employes, and demands for rules and working conditions with respect thereto that the plaintiff is unable to grant, because its financial condition will not permit it so to do without immediately impairing and ultimately de-

stroying its ability to continue to operate and to serve the public in the manner in which it has served it in the
26 past, and this notwithstanding plaintiff has never had any disputes with its employes which have not been amicably adjusted, and notwithstanding it has continuously operated under contracts with organizations of its employes which are absolutely independent of it and in no wise under its control, as to rates of pay, rules and working conditions, because plaintiff's employes will be influenced to abandon their present organizations and to join those organizations of employes on transcontinental steam railroads throughout the country, on the promise that they will receive the higher or so-called steam railroad standard wages and the different or so-called standard rules and working conditions prevailing thereon, which said organizations represent the employes of said transcontinental steam railroads, and will then demand such higher wages and such different rules and working conditions which prevail on said transcontinental steam railroads, which said wages and rules and working conditions are unwarranted and inapplicable to plaintiff, and if plaintiff refuses to pay such wages and to adopt such rules and working conditions labor disputes and strikes will result, which will inflict such financial losses upon the plaintiff that it will be unable continue to operate and to serve the public in the manner in which it has been doing in the past, and in that under Section 3 of the Act disputes with reference to interpretation of agreements between plaintiff and its employes, and as to grievances of plaintiff's employes against it, and as to the discharge of any of its employes, will have to be submitted to the National Railroad Adjustment Boards which have been operated under said Act without the plaintiff having any part in the selection of the members thereof.

That said Railway Labor Act is unconstitutional, null and void in this, that it attempts to vest in the National Railroad Adjustment Board the right to determine whether or not the plaintiff has the right to discharge its employes and thereby deprive the plaintiff of its liberty of contract and of its property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States; that as claimed, construed and declared by the defendant herein,
27 said Railway Labor Act is unconstitutional, null and void in this, that it vests in the Interstate Commerce

Commission the power and authority to determine whether or not the plaintiff is an interurban railroad and that said determination is final and binding upon this plaintiff, not only in compelling it to comply with the terms of said Act, but is also a final determination of the status of said plaintiff with respect to being an interurban railroad, and that if the said Commission has determined that it is not an interurban railroad, that such determination is final and binding even in criminal actions brought against the said plaintiff, or its officers or agents, as provided in said Act, and as so claimed, interpreted and declared by said defendant said Railway Labor Act deprives the plaintiff and its officers and agents of their liberty and their property without due process of law, and denies to said plaintiff, its officers and agents in said criminal actions the right of trial by jury, and thereby violates the fifth and sixth Amendments to the Constitution of the United States; that said Railway Labor Act is unconstitutional, null and void in this, that as claimed, interpreted and declared by the defendant herein, it attempts to vest in the Interstate Commerce Commission the power and authority to determine whether or not the plaintiff is an interurban railroad without fixing any standard by which said determination shall be made by said Interstate Commerce Commission and is an unwarranted delegation of legislative power by the Congress of the United States to an administrative body, and thereby deprives the plaintiff of due process of law, not only because it thereby vests in the Interstate Commerce Commission power and authority to determine its status with respect to compliance with the provisions of said Act, but also in any criminal actions which will be brought by the defendant against the plaintiff, or its officers or agents, and is in violation of the Fifth Amendment of the Constitution of the United States; that said Railway Labor Act is unconstitutional, null and void in this, that as claimed, construed and declared by the defendant herein it attempts to vest in said Interstate Commerce Commission the power and authority to determine whether or not the plaintiff is an interurban railroad, without fixing any standard by which such determination shall be made by said Interstate Commerce Commission and is an unwarranted delegation of legislative power to an administrative body
28 by the Congress of the United States and thereby deprives the plaintiff of due process of law, not only in the determination of its status with respect to compliance with

the provisions of said Act, but also in criminal actions that will be brought by the defendant against it, or its officers or agents, for the violation of the provisions of said Act, and will thereby deprive said plaintiff and its officers and agents of the right to trial by jury, and is in violation of the Sixth Amendment of the Constitution of the United States; that said Railway Labor Act is unconstitutional, null and void in this, that if the said plaintiff comes within the provisions of said Act, as claimed, interpreted and declared by the defendant herein, then, as hereinbefore alleged, it will result in the destruction of the plaintiff's business and property and will amount to confiscation thereafter without due process of law and in violation of the Fifth Amendment of the Constitution of the United States.

13. That the defendant Dan B. Shields, United States Attorney for the District of Utah, is charged by law, said Railway Labor Act, with the enforcement of said Act and with the duty of filing suits and prosecuting plaintiff and its officers and agents under the direction of the Attorney General, for violations of said paragraph of said Section of the Act; and is by law charged with the duty of prosecuting in this District for all crimes and delinquencies cognizable under the authority of the United States; that the defendant has threatened to file suits and prosecute the plaintiff and its officers and agents for the failure upon the part of the plaintiff to comply with the Railway Labor Act, and that unless the relief herein prayed for is granted he will do so; that under the circumstances herein alleged plaintiff is without adequate remedy at law and that it is entitled as of right to immunity from the severe and cumulative penalties pending an orderly and judicial
29 test of the application of said Act to plaintiff, and those particular portions thereof aforesaid, and the question of whether or not it is subject to the provisions of said Act; and in order that such test may be initiated and determined judicially, it should be protected against any prosecution or prosecutions for violation of said penal provisions of said Act, or any of them, pending such judicial determination.

Wherefore plaintiff prays:

1. That this court take jurisdiction of this case and cause appropriate process to issue against the defendant Dan B. Shields, United States Attorney for the District of Utah, and

require him to answer this amended bill of complaint, as required by the rules of this court and as required by law.

2. That pending final hearing herein, the court cause to be issued and served upon the defendants an order to show cause why a temporary injunction should not issue against said defendants and upon the hearing thereof that the court issue a temporary injunction in accordance with the rules of this court enjoining and restraining the defendant from initiating, from prosecuting, and from initiating and prosecuting any suit or suits against the plaintiff, its officers and agents, or any of them, based upon the alleged violation by them, or any of them, of any of the provisions of the Railway Labor Act, or based upon the alleged violation of Section 2 thereof, or either of them; and that upon final hearing said injunction be made final and perpetual; that upon final hearing of this cause, the court shall order, adjudge and decree, pursuant to the provisions of the Federal Declaratory Judgment Act as amended, that said Railway Labor Act is unconstitutional, null and void, and if the same is held valid that the plaintiff is an electric interurban railroad not operating as a part of a general steam-railroad system of transportation, and as such is not subject to the provisions of the Railway Labor Act.

3. That plaintiff shall have such other, further and general or special relief as the nature of the case may require and the Court may deem just and proper in the premises.

THE UTAH IDAHO CENTRAL RAILROAD COMPANY,

By J. A. Howell, One of its Attorneys, Plaintiff.

30 J. H. DeVine, J. A. Howell, David L. Stine, Attorneys and Solicitors for Plaintiff, 625 Eccles Building, Ogden Utah.

(Duly verified)

Copy of the foregoing Amended Bill of Complaint received this 8th day of September, 1936.

DAN B. SHIELDS, U. S. Attorney,

SCOTT M. MATHESON, Assistant U. S. Attorney
for the District of Utah,
Solicitors for Defendants.

Filed in United States District Court, District of Utah Sep. 8, 1936 W. B. Wilson, Clerk By V. P. Alfistrom, Deputy

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## Exhibit A

Article 112, Section 60, of the Revised Civil Statutes of Texas, 1911, reads as follows:

"Article 1121. For what purposes corporations may be formed. The purpose for which private corporations may be formed are:

* * *

"60. The construction, acquiring, maintaining, and operating lines of electric, gas, or gasoline, denatured alcohol, naphtha motor railways within and between any cities or towns, in this state, for the transportation of freight, or passengers, or both, with power, also to construct, own and operate union depots and office buildings. But no electric, gas, or gasoline, denatured alcohol, or naphtha railways, incorporated under this subdivision, shall ever be exempt from the payment of assessments that may be legally levied, or assessed against it for street improvements. Corporations created under this subdivision shall be, and are authorized to exercise the right of eminent domain for the purpose of acquiring right of way upon which to construct their railway lines, and sites, for depots and power plants, upon the same conditions, and in the same manner, as railroad corporations are now required to do under the laws of this state, and shall have the same rights, power and privileges as are now granted to interurban electric railway companies, by Chapter 17, of Title 115, of the Revised Civil Statutes of 1911, passed at the regular session of the thirty-second legislature, and all the powers of whatsoever kind, or character conferred by said chapter; provided no property upon which
31 is located a cemetery shall ever be condemned, unless it shall affirmatively be shown, and so found by the Court trying such condemnation suits, that it is necessary to take such property, and no other route is possible or practicable; and provided that the electric, gas or gasoline, denatured alcohol or naphtha motor railways incorporated under this sub-division, which shall engage in transporting freight shall be subject to the control of the railroad commission, (Acts 1913, p. 67, Sec. 1, amended Acts 1913, p. 349, Sec. 1.)

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## Amendment to Amended Bill of Complaint for Injunction and Petition for Declaratory Judgment

Your petitioner, the Utah Idaho Central Railroad Company, by leave of Court first had and obtained, makes and files this amendment to the amended bill of complaint for injunction and petition for declaratory judgment herein and respectfully represents and alleges:

In addition to the allegations of paragraph 12 of said amended bill of complaint, and at the end thereof, the following:

That said Railway Labor Act is unconstitutional, null and void in this: That Section 2, Fourth, of said Act provides that representatives selected by a majority of the employes of the carrier in a bargaining unit shall be the exclusive representatives of such employes to bargain with the carrier in matters involving wages, hours of work, and other conditions of employment, and that if the plaintiff is subject to the provisions of said Act, then that thereunder the representatives selected by a majority of the employes of the plaintiff in a bargaining unit shall be the exclusive representatives of such employes to bargain with the plaintiff in matters involving wages, hours of work, and other conditions of employment, and that the attempt of said Act to so provide deprives the carrier of its liberty to contract, and its rights under the Fifth Amendment of the Constitution of the United States, and of its right to negotiate and to make contracts with minority groups
33 of its employes, or with its individual employes; that said Act is unconstitutional, null and void in this, that it attempts to vest in the National Mediation Board created by the Act the power in its discretion to determine the unit of representation to be used in such negotiations and contracts between the carrier and its employes and if said Act is applicable to this plaintiff, said Act and said provision thereof deprives the plaintiff of its right to determine with whom among its employes it shall negotiate and contract, and such provision is arbitrary, capricious and unreasonable, and does not constitute due process of law, and violates the rights of the plaintiff under the Fifth Amendment of the Constitution of the United States.

That said Act, and particularly Section 2, Fourth, thereof, is unconstitutional, null and void and violates the rights of the plaintiff under the Fifth Amendment of the Constitution of

the United States in this: That said Act attempts to prohibit the carrier coming within the provisions of the Act, and therefore the plaintiff, if the Act is applicable to it, from interfering in any way with the organization of its employes or from using its funds in maintaining, assisting or contributing to any other labor organization, labor representative, or other agency for collective bargaining, and makes it unlawful for the plaintiff to influence its employes to join or remain or not to join or remain members of any labor organization, and prohibits the plaintiff from deducting from the wages of employes any dues payable to any labor organization, and forbids the plaintiff from collecting any such dues, and such provisions are unreasonable, arbitrary and capricious and deprive the plaintiff of its right to establish or maintain better relationships with its employes, or to continue by the exercise of its influence or the expenditure of its funds the existence of amicable relations between it and its employes and the labor organizations to which they have for many years belonged, which organizations and amicable relations between them and the plaintiff, as hereinbefore set out, have continued during all the period of plaintiff's existence.

That said Act, and particularly Section 2, Fifth, thereof,
33 is unconstitutional, null and void in this; That it prohibits a carrier, or its officers or agents, from requiring that any person seeking employment sign a contract, by which the prospective employe agrees not to a join a labor organization, and further provides for the abrogation of any such contract as may have been in existence at the time of the passage of said Act, and if said Act is applicable to the plaintiff, then such provision thereby deprives the plaintiff of its liberty to contract with its employes, in violation of the Fifth Amendment of the Constitution of the United States.

That Section 2, Seventh, and Section 6 of said Act requires that carriers and representatives of their employes shall serve at least thirty days written notice of an intended change in agreements between them affecting rates of pay, rules, or working conditions, and prohibits the carrier from changing the rates of pay, rules, or working conditions as provided in the agreements without giving thirty days notice, except in cases where the agreements themselves provide for the change, and if the said Act is applicable to the plaintiff, then such provision is unreasonable, arbitrary and capricious and interferes with the

intiff's liberty of contract, in violation of the Fifth Amend-
nt of the Constitution of the United States, and deprives
e plaintiff of due process of law, and bears no real or sub-
ntial relation to interstate commerce.

That said Act and particularly Section 2, Eighth, thereof,
unconstitutional, null and void in this: That it provides
t the carrier shall notify its employes in form to be pre-
ibed by the National Mediation Board that all disputes with
employes shall be handled in accordance with the require-
nts of the Act and that the carrier shall print verbatim in
h notice the 3rd, 4th and 5th paragraphs of Section 2,
ich by paragraph Eighth of said Section are made a part of
e contract of employment between the carrier and each em-
ye, and by its express provisions abrogates and nullifies any
existing contracts between the carrier and its employes in
conflict with said paragraphs, which provisions, if ap-
plicable to the plaintiff, are unreasonable, arbitrary and
ricious as to it, and deprive the plaintiff of its rights under
Fifth Amendment of the Constitution of the United States,
d bear no real or substantial relation to interstate com-
rce.

That said Act, and particularly Section 2, Ninth, thereof, is
constitutional, null and void in this: That it provides that
National Mediation Board shall have final authority to
ermine and to certify the identity of qualified representatives
employes and that the carrier shall treat with representa-
es so certified as the representatives of the craft or class of
ployes for the purposes of the Act, and if said Act is ap-
cable to the plaintiff then such provision deprives the plain-
of its rights under the Fifth Amendment of the Constitu-
n of the United States and does not constitute due process of
and is unreasonable, arbitrary and capricious, and bears
real or substantial relation to interstate commerce.

That said Act and particularly Section 3 thereof is uncon-
tutional, null and void in this: That it provides for a sys-
n of National Railroad Adjustment Boards, with jurisdic-
n to try and determine matters of private contract rights
d provides that such determination by the Board of factual
tters shall be final and conclusive, and if the Act is applica-
to the plaintiff, such provision deprives the plaintiff of
right under the Fifth Amendment to the Constitution of the

United States and its liberty to contract as guaranteed thereby, and denies to it due process of law.

That all of the foregoing provisions of said Act are component parts thereof and are inseparable therefore the entire Act is unconstitutional, null and void.

THE UTAH IDAHO CENTRAL RAILROAD COMPANY,

By J. A. Howell, One of its Attorneys

J. H. DeVine, J. A. Howell, David L. Stine, Attorneys and Solicitors for Plaintiff (Duly verified)

Service of the foregoing amendment admitted and
35 acknowledged this 12th day of October, 1936.

DAN B. SHIELDS,

By Scott M. Matheson, Asst. U. S. Atty.
Solicitor for Defendant.

DANIEL W. KNOWLTON, Chief Counsel.
NELSON THOMAS, Attorney.

Filed in United States District Court, District of Utah October 12, 1936 W. B. Wilson, Clerk By M. S. Sturdevant, Deputy

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Answer

Comes now the defendant, Dan B. Shields, United States Attorney for the District of Utah, and for answer to the Amended bill of Complaint herein, states:

1. Defendant admits the allegations of Paragraph 1 of the bill of complaint.

2. Defendant denies that this suit presents and involves an actual controversy between the plaintiff and defendant. Defendant admits the remaining allegations of Paragraph 2 of the bill of complaint.

3. Defendant is without knowledge concerning the allegations of Paragraph 3 of the bill of complaint.

4. Defendant admits the allegations of Paragraph 4 of the bill of complaint, except that defendant denies that the line of railroad operated by plaintiff is an interurban railroad.

5. Answering Paragraph 5 of the bill of complaint, defendant admits that prior to the year 1914 there was operated in the City of Ogden, in Weber County, State of Utah, a street car system and also a line of railroad running from the north city limits of Ogden City to Hot Springs, Utah, a distance of approximately ten miles; that these properties prior to the year 1914 were acquired by Ogden Rapid Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, and electrified as an electric railroad and extended to Brigham City, Box Elder County, State of Utah; that prior to 1914 there was operated in the City of Logan a street car system, which had been electrified and extended as an electric railroad northward to Smithfield, Utah, and southward to Wellsville, Utah, which electric railroad was owned and operated by Logan Rapid Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Utah; that in 1914 the Ogden Rapid
36 Transit Company and the Logan Rapid Transit Company were under the laws of Utah consolidated into a corporation known as Ogden Logan & Idaho Railway Company, which continued to own, control and operate the properties formerly owned and operated by its constituent companies; that the said Ogden Logan & Idaho Railway Company rebuilt that portion of the line running northward from Ogden City to Brigham City, and constructed a new electric line from Brigham City north over the Collinston divide, thus connecting the lines formerly operated by its constituent companies, and also constructed a new line from the northern terminus of the line of the Logan Rapid Transit Company to Preston, Idaho, a distance of six miles north of the Utah line; that the said Ogden Logan & Idaho Railway Company by an amendment to its Articles of Incorporation changed its corporate name to Utah Idaho Central Railroad Company and that the company continued to operate the same lines until 1920, when the city street car system in Ogden City was segregated from the other operations of the company and transferred to the Utah Rapid Transit Company; that the operation of the electric line from Ogden City to Preston, Idaho, and the operation of the street car system in Logan City remained with the Utah Idaho Central Railroad Company until 1926, when that company went through a receivership in this court, which resulted in the properties being acquired by the plaintiff; and that the plaintiff has instituted a bus operation in lieu of the

street car lines in Logan City and has instituted a bus system over the state and county highways substantially paralleling its rail line from Ogden, Utah to Preston, Idaho. Defendant is without knowledge concerning the allegations in paragraph 5 of the bill of complaint not expressly admitted herein.

6. Answering Paragraph 6 of the bill of complaint, defendant admits that the resources of the territory served by plaintiff north of Ogden to the Collinston divide, and the resources of the Cache Valley are agricultural in character and industrial to the extent only of processing agricultural products. The defendant is without knowledge or information sufficient to form a belief as to the activities of the plaintiff in fostering industrial, agricultural and social development in the above mentioned territory as alleged by plaintiff in said Paragraph 6, and therefore, denies the same.

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7. Defendant is without knowledge concerning the allegations of Paragraph 7 of the bill of complaint.

8. Defendant is without knowledge concerning the allegations of Paragraph 8 of the bill of complaint.

9. Defendant admits the allegations of Paragraph 9 of the bill of complaint.

10. Defendant denies that the plaintiff is an electric interurban railway, as the said term is used in and within the purview of the Railway Labor Act and that the plaintiff is exempt from any and all provisions of the Railway Labor Act. Defendant admits the remaining allegations of Paragraph 10 of the Bill of complaint.

11, Defendant is without knowledge concerning the allegations of Paragraph 11 of the bill of complaint.

12. Defendant avers that the provisions of the Railway Labor Act speak for themselves, and that it is therefore unnecessary to answer the allegations in the first paragraph of Paragraph 12 of the bill of complaint.

Answering the second paragraph of Paragraph 12 of the bill of complaint, defendant admits that the Railway Labor Act creates a board known as the National Mediation Board and gives the said Board certain powers and duties in connection with the administration of the Act; that among such powers and duties is the duty to prescribe the form of notice

to carrier employees, as set out in Section 2, Eighth, of the Act, and that the Mediation Board has prescribed the form of notice provided for in Section 2, Eighth, and ordered that it be posted as therein specified; and that if plaintiff fails to comply with said order and with certain other provisions of the Act, it will be subject to prosecution for the penalties provided in the Act. Defendant has no knowledge concerning the remaining allegations of fact in the second paragraph
38 of Paragraph 12 of the bill of complaint. Defendant is not required to make answer to the conclusions of law in the said paragraph, but nevertheless denies the same.

Answering the third paragraph of Paragraph 12 of said bill of complaint, defendant shows that each and every allegation in the said paragraph is a conclusion of law and that he is not required to make answer thereto, but nevertheless denies the same.

13. Defendant admits that he is charged by law with the enforcement of certain provisions of the Railway Labor Act, as prescribed in Section 2, Tenth, thereof. Defendant denies the remaining allegations of Paragraph 13 of the bill of complaint.

Defendant further avers that he has made no threats to file suit and prosecute the plaintiff, its officers and agents, for their failure to comply with the Railway Labor Act. Paragraph 2, Tenth, of the Act makes it the duty of the defendant, upon the application of any duly designated representative of plaintiff's employees and under the direction of the Attorney General of the United States, to prosecute violations of the Railway Labor Act, but no such application has been made by any representative of plaintiff's employees, and no authorization to prosecute plaintiff has been received from the Attorney General.

Further Answering the Said Bill of Complaint, the defendant states:

14. Section 1, First, of the Railway Labor Act provides, in part, as follows:

Provided, however, that the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the

general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

Upon the request of the National Mediation Board, proceedings were instituted before the Interstate Commerce Commission to determine whether the plaintiff came within the
39 above proviso exempting certain carriers from the Railway Labor Act. The Commission held a hearing, at which plaintiff was represented, and introduced evidence. On March 18, 1936, the Commission handed down a decision in which it held that the plaintiff's lines "do not constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso". A copy of the report of the Commission, printed in 214 I.C.C. 707, is attached hereto as Exhibit A.

15. The Commission's determination that an electric railway does not come within the proviso set forth in the preceding paragraph is controlling unless arbitrary, unreasonable, or not based upon substantial evidence.

16. The bill of complaint contains no allegation that the determination of the Interstate Commerce Commission is arbitrary or unreasonable or unsupported by substantial evidence.

Wherefore Defendant Prays that the injunctive relief sought by plaintiff be denied and that the bill of complaint be dismissed.

DAN B. SHIELDS, United States Attorney.

(Duly verified)

Filed in United States District Court, District of Utah Sept. 16, 1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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Affidavit of Service of Answer of Dan B. Shields

The United States of American, District of Utah,

Central Division, ss.

Winnie Esterak, being first duly sworn upon her oath, deposes and says:

That she is a Clerk in the office of the United States Attorney for the District of Utah; that on September 16, 1936, she served

Answer in the above entitled cause on Plaintiff, The Utah Idaho Central Railroad Company, a corporation, by placing a true copy of said Answer in a franked envelope of the United States addressed to Counsel for said plaintiff as follows, to wit:

DeVine, Howell & Stine,
Attorneys at Law
625 Eccles Building
Ogden, Utah,

and deposited the said envelope in the United States Post Office at Salt Lake City, Utah, for mailing and delivery to said Counsel for said plaintiff.

WINNIE ESTERAK.

Subscribed and sworn to before me this 16th day of September, A. D. 1936. (Seal) W. B. Wilson, Clerk U. S. District Court By Margaret Johnson Deputy

Filed in United States District Court, District of Utah Sep. 16, 1936 W. B. Wilson, Clerk. By V. P. Ahlstrom, Deputy

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Minute Entry—September 16, 1936

At this 16th day of September, 1936, on motion of Scott M. Matheson, Assistant United States Attorney, it is ordered that this case be set for trial October 5, 1936.

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Minute Entry—September 26, 1936

At this 26th day of September, 1936, by agreement of counsel it is ordered that this case be set for trial at Ogden, October 12, 1936.

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Petition of Interstate Commerce Commission for Leave To Intervene as a Party Defendant

Comes now the Interstate Commerce Commission and respectfully shows that it is a party in interest in the above-styled suit and prays permission to intervene as a party defendant herein, to file its answer hereto attached and to participate in the defense of the above-styled suit as fully and completely as if named a defendant in the amended bill of complaint herein filed, and for its ground for intervention, says:

1. That it is a body politic duly constituted and organ-
41 ized under the laws of the United States and has power to sue and to be sued as a legal entity.

2. That Section 1 of the Railway Labor Act, as quoted in paragraph 9 of the amended bill of complaint authorized and directs the Commission upon request of the National Mediation Board provided for in the Railway Labor Act of May 20, 1926, amended June 21, 1934, to determine after a hearing whether any line of railway operated by electric power falls within the terms of the proviso of said section of said Railway Labor Act which exempts from the operation of said act any street, interurban or suburban electric railway unless such railway is operated as a part of a general steam railroad system of transportation, but shall not exclude any part of the general steam railroad system of transportation now or hereafter operated by any motive power other than steam. That pursuant to the aforesaid provisions of said act and upon request of the National Mediation Board, the Commission on May 17, 1935, instituted an investigation to determine the status of the Utah Idaho Central Railroad Company in a proceeding styled Railway Labor Act Docket No. 12, Utah Idaho Central Railroad Company, and held public hearings therein, in which the said railroad company appeared and presented evidence upon the question under investigation. That as a result of said investigation and in accordance with the evidence heard therein, the Commission on March 18, 1936, made its report wherein it found that the Utah Idaho Central Railroad Company's lines do not constitute a street, interurban or suburban electric railway within the meaning of the exemption proviso in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934. Said report is officially reported at 214 I.C.C. 707. That the Commission duly notified the said Mediation Board and the said railroad company of said report and finding.

3. That in the amended bill of complaint filed herein, the plaintiff asserts and alleges as a ground for the relief prayed that its lines constitute a street, interurban or suburban electric
42 railway within the meaning of the exemption proviso aforesaid and that it is therefore exempt from any and all provisions of the Railway Labor Act. That said averments of said amended bill of complaint are directly contrary to and contradictory of the findings and conclusion of the Commission as set out in said report, and that therefore the

Commission should be permitted to appear as a party defendant and refute and rebut said contentions of the plaintiff and support and maintain its findings and conclusion based upon the evidence taken at the hearing before it as provided by law.

INTERSTATE COMMERCE COMMISSION,

Daniel W. Knowlton,
Nelson Thomas.

Filed in United States District Court, District of Utah Oct 5—1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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Order Granting Leave to Interstate Commerce Commission To Intervene as a Party Defendant

Upon consideration of the Petition of the Interstate Commerce Commission for leave to intervene as a party defendant in the above-entitled cause,

It Is Ordered, That said petition be, and the same is hereby, granted with leave to said Commission to participate in said suit as fully and completely as if named a defendant therein.

TILLMAN D. JOHNSON, United States District Judge.
Filed in United States District Court, District of Utah Oct 5—1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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Answer of Interstate Commerce Commission

The Interstate Commerce Commission, hereinafter called the Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies contained in the
43 amended bill of complaint herein, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I.

Answering paragraphs 1 and 9 of the amended bill of complaint, the Commission admits, for the purposes of this suit, that the facts therein alleged are true.

II.

The Commission alleges that on, to wit, May 17, 1935, pursuant to request of the National Mediation Board, made in accordance with authority conferred upon said Board by Section 1 of the Railway Labor Act, as amended by the Act of June 21, 1934, the Commission instituted a proceeding entitled Railway Labor Act, Docket No. 12, *Utah Idaho Central Railroad Company*, for the purpose of determining whether The Utah Idaho Central Railroad Company was either a street, or an interurban, or a suburban, electric railway, within the meaning of said Section 1 of the Railway Labor Act as amended by said Act of June 21, 1934; and the Commission refers the Court to said Section 1 for full and complete information concerning the language therein contained.

The Commission further alleges that in said proceeding the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearing provided for by said Section 1; that in said hearing a large volume of testimony and other evidence bearing upon the subject matter of inquiry in said proceeding was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said subject matter were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions submitted to the Court for determination by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the plaintiff herein, and upon other interested parties, its report of March 18, 1936, the citation of which is 214 I.C.C. 707; that a true copy of said report is attached hereto, as Exhibit A, and made a part hereof; that said report contains the Commission's statements and findings of fact; and that the last paragraph of said report reads as follows:

44

"We find that The Utah Idaho Central Railroad Company's lines do not constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934." (Id. 716.)

The Commission further alleges that the findings of fact included in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including many of the matters covered by the allegations contained in said amended bill of complaint.

The Commission further alleges that said report of March 18, 1936, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said report the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said amended bill of complaint.

The Commission especially denies that, as appears to be alleged in paragraph 11 of the amended bill of complaint, the Commission has ever designated plaintiff an interurban electric railway, within the meaning of said Section 1 of the Railway Labor Act.

The Commission denies each of and all the allegations pertaining to unconstitutionality, contained in paragraph
45 12 of the amended bill of complaint, and particularly the allegation that no standard has been prescribed by law for the guidance of the Commission in determining whether plaintiff is an interurban railroad within the meaning of the proviso contained in Section 1 of the Railway Labor Act, as aforesaid.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the amended bill of complaint, in so far as they conflict either with the allegations herein, or with either the statements or findings of fact included in said report of March 18, 1936, which report is hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said amended bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,

By Nelson Thomas, Attorne

Daniel W. Knowlton, Chief Counsel, Of Counsel

(Duly verified)

Filed in United States District Court, District of U
Oct 5—1936 W. B. Wilson, Clerk By V. P. Ahlstrom, De

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Exhibit A

Interstate Commerce Commission

Railway Labor Act Docket No. 12

Utah Idaho Central Railroad Company

Submitted February 27, 1936. Decided March 18, 1936

The Utah Idaho Central Railroad Company's lines found not to constitute a street, interurban, or suburban electric railway within meaning of the exemption proviso in the first paragraph of section the Railway Labor Act, as amended June 21, 1934.

J. H. DeVine, J. A. Howell, and David L. Stine for carr

Ezra Brainerd, Jr., and D. A. MacKenzie for labor organ tion.

Report of the Commission

Division 3, Commissioners McManamy, Porter, and Mille McManamy, Commissioner:

This proceeding was instituted at the request of
46 National Mediation Board to determine whether
Utah Idaho Central Railroad Company is exempt fr the Railway Labor Act as amended June 21, 1934, under *provisio* to the first paragraph of section 1 thereof, which re as follows:

Provided, however, That the term "carrier" shall not incl any street, interurban, or suburban electric railway, unl such railway is operating as a part of a general steam-railr system of transportation, but shall not exclude any part the general steam-railroad system of transportation now hereafter operated by any other motive power. The Interst Commerce Commission is hereby authorized and direc upon request of the Mediation Board or upon complaint

any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

A hearing has been held at which evidence was introduced on behalf of the above-named railroad company, which contends that it is exempted by the proviso quoted, and its witness was cross-examined by a representative of the Brotherhood of Railroad Trainmen. Briefs have been filed on behalf of the parties named together with the Railway Labor Executives' Association, which joined the Brotherhood of Railway Trainmen in opposing the railroad company's contention. Exceptions were filed by the carrier to the report proposed by the examiner, and the parties were heard in oral argument.

The Railway Labor Act as amended June 21, 1934, provides for the prompt and orderly settlement of disputes between the carriers and their employees. The first paragraph of section 1 thereof defines the term "carrier" as including among others any carrier by railroad subject to the Interstate Commerce Act, which is followed by the proviso hereinbefore quoted. There is no question that the Utah Idaho Central is a carrier by railroad subject to the Interstate Commerce Act, except such sections thereof as contain exemptions somewhat similar to that hereunder consideration. This railway is operated by electric power, and none of its stocks or bonds are owned by any steam railroad. The only issue therefore is whether it is a street, interurban, or suburban railway within the meaning of the proviso.

In the first case arising under this proviso in the Railway Labor Act, Texas Electric Ry., 208 I. C. C. 193, division 6 said at pages 194, 195:

The amended Railway Labor Act does not indicate the purpose of exempting the class of lines referred to in the proviso to the first section. No reason is apparent for distinguishing between steam and electric power, and the act does not purport to exempt all electric lines. There are other reasons which may have influenced Congress, but we think the fundamental reason was that the lines exempted are essentially local in character and largely disassociated from the steam-railroad systems. This belief is confirmed by reference to the Congressional hearings preceding the passage of this act and other acts containing similar exemptions, which hear-

to

ings are referred to in the briefs and oral argument of both sides.

Previous to the passage of the amendment to the Railway Labor Act on June 21, 1934, this Commission had rendered numerous decisions regarding the status of particular electric lines under somewhat similar exemption provisions in certain sections of the Interstate Commerce Act and other acts which we administer. These decisions recognized the existence of a class of electric railways which are more than street, interurban, or suburban lines, and which are sometimes referred to as commercial railways operated by electric power. Perhaps the best description of what constitutes a street, interurban, or suburban railway was given in Rules for Testing Other Than Steam Power Locomotives, 122 I. C. C. 414, where the Commission said at page 424:

"It is well known that electric cars were at first confined to street service in cities and towns. Gradually the lines were extended to the suburbs. Next came the idea of extending the lines from city to city. These three steps gave rise to the terms street, suburban, and interurban electric railways. These lines were limited almost exclusively to carriage of passengers. They were built largely upon streets and public highways. The only material difference between street, suburban, and interurban lines was the extent of the lines. If the line extended from city to city it was termed an interurban although handling the same traffic and being operated in substantially the same manner as the street or suburban line. We think this is the usual conception of the interurban line today.

"Obviously the character of the lines may change without a change in the name of the operating company. The record here shows that the name of a carrier, whether it is called a railroad, traction system, interurban railway, or power and light company, indicates nothing as to the character of the line or the nature of the traffic handled. We must look to the substance of the matter. A line which today extends only between two cities, and is dependent upon passenger traffic for the bulk of its revenues, might properly be termed an interurban line. In a period of years it might through natural development or consolidation become a railway comparable with our steam railroads and still retain its original name.

would no longer, however, be an interurban railway in bstance and in fact. There would be a point, although not finitely defined, where the line passed beyond the true terurban."

he Utah Idaho Central extends from Ogden, Utah, north to ton, Idaho, a distance of 94.63 miles, with two branch lines pproximately 7 and 14 miles respectively. It also has 36.93 s of siding, spur, and yard tracks, making a total of 152.68 s of track. All of this is within the State of Utah, except t 6 or 7 miles in Idaho, and with the exception of Preston, points herein mentioned are in Utah. The principal cities ed, with their populations, are Odgen 40,272, Brigham 3, Logan 9,979, and Preston 3,381, and 14 other cities or in-orated towns are served, having a population ranging from to 2,353 each. Almost all of the line is in the Great Salt e Valley and the Cache Valley, which are largely agri-ural sections separated by a part of the Wasatch Moun-s. This railway closely parallels the main line of the Oregon rt Line Railroad Company for about 40 miles north of en, and it parallels a branch of the same trunk line for t of the remaining distance to Preston. The number of em-ees averaged about 150 in 1934.

he history of the Utah Idaho Central and its predecessors n about 1890, when 3 or 4 miles of street railway in Ogden e operated with horse-drawn cars. This property was ac-ed by the Ogden Rapid Transit Company in the late ties, which marked the beginning of its electrification, re-ilitation, and expansion. During the same period in the late ties, the Ogden & Northwestern Railroad Company built ne from Ogden to Hot Springs, 9 miles, which it operated a small steam locomotive. About 1910 that line was also ired by the Ogden Rapid Transit Company, which equipped r electrical operation and extended it to Brigham, 21 miles n Ogden. Contemporaneously with this development be-en Ogden and Brigham, the Logan Rapid Transit Company t a street railway in the city of Logan, together with lines mithfield, about 8 miles north, and to Wellsville, 12 miles th, of Logan, all operated with electric power. In 1914 the den Rapid Transit Company and the Logan Rapid Transit mpany were consolidated into one corporation, the Ogden, an & Idaho Railroad Company, which built a connecting from Brigham north over the Collinston Divide to the

southern terminus of the Logan Rapid Transit Company, and also extended the latter's line northward from Smithfield to Preston. In the latter part of 1919, the street-car operations in Ogden and a suburban operation into Ogden Canyon were segregated from the other lines and have since been operated by a separate corporation, th Utah Rapid Transit Company, which is not involved in this proceeding. The name of the Ogden, Logan & Idaho Railroad Company was later changed to the Utah Idaho Central Railroad Company, a Utah corporation, and in 1926 the latter was reorganized as the Utah Idaho Central Railroad Company, a Delaware corporation. In recent years the company has established and operates a motor-bus service parallel to its railway, and it has substituted motor busses for the local street-car service in Logan. The railway was practically entirely financed by citizens of northern Utah, who have to a large extent retained their interest therein, and many of the employees have remained the same through the various corporate changes.

Approximately 81.8 percent of the railway is located on privately owned right-of-way, and the remaining 18.2 percent is located on public streets or highways. The latter includes from 0.19 to 2.02 miles in each of 15 cities and towns, or a total of 14.1 miles, and 6.54 miles of the branch lines are on county roads. In many, if not most, instances the line passes through the cities and towns on their main business streets, and the terminal in Ogden is near the business center. Some of the franchises to use the streets and highways were granted for a street railway, an interurban, or a street and interurban railway to be operated with electricity, compressed air, or liquefied air as motive power, but more of them were granted for the operation of a double-track or single-track railroad, generally with a restriction against the use of steam or other motive power which might scatter sparks or fire. In a few instances the use of steam power was not specifically prohibited, and one franchise authorized its use for the first 25 years, which have now expired. In 1926 the franchises were generally amended to include operation as a common carrier by motor vehicle.

The tracks are of standard gage with 80 miles of 70-pound rail and 11 miles of 65-pound rail on the main line, 20 miles of 45 to 48 pound rail on the branches, and 26 miles of 48-pound rail on the sidings and spurs, the remainder varying from 40

to 85 pounds for comparatively short distances. The ties are 6 by 8 inches and 8 feet long, spaced 2 feet between centers, and only 11.3 miles of the main line are tie-plated. There are 70 places on the main line where the grade breaks or changes, which is an average of nearly one to every mile. The maximum grade is 4.77 percent for one tenth of a mile in the city of Logan, which is necessary to conform with the grade of the street. Outside of that, the maximum grade is 2 percent at several places for an aggregate of 18.9 miles, most of which is encountered in going over the Collinston Divide. The line makes a long circuit in going over the divide, and the sharpest curve on the main line is 12°. The most difficult curves are on the spur tracks where, in at least two instances, there are 60° curves with a radius of 100 feet. On such curves it is often necessary to switch the largest box cars one at a time, but there is no restriction here or elsewhere against steam-railroad freight cars. Steam locomotives, however, could not safely operate over many of the sidings or spur tracks.

The passenger trains consist of either one or two cars, which are self-propelled, and in 1934 they averaged 1.1 cars per train. There are 73 places on 107 miles of line where stops are made for passengers, of which 52 are flag stops. The number of passengers carried in 1934 was 408,634, of which 175,599 were students going to and from centrally located schools at public expense. The passengers handled by train and bus are not shown separately, but in 1934 the number of busses operated average 4.1 per day compared with a daily average of 11.5 passenger trains. No interline tickets are sold except in connection with other electric railways operating in Utah. The average fare paid ranged from 29.6 cents in 1931 to 20.7 cents in 1934. The passenger revenues have declined every year since 1920, those for 1934 being $61,346.25 compared with $448,184.01 in 1920. This has been due primarily to the steadily increasing use of private automobiles, together with the construction of paved highways, particularly one which is 20 miles shorter than the railway between points in the Great Salt Lake Valley and the Cache Valley. The passenger trains carry baggage, mail, and express, which in 1934 yielded $39.48, $2,660.33, and $5,931.50 respectively.

The freight traffic consists to a large extent of raw products such as sugar beets, milk, tomatoes, and peas moving to factories, canneries, or processing plants, and the manufactured

products moving outbound from such plants to connecting railroads. A considerable portion of the raw-products movement requires special service with 1-car or 2-car trains. A daily package-merchandise train is maintained with facilities for refrigeration in summer and heating in winter and with pick-up and delivery service at all available points. In 1934 all of the freight trains averaged 6.2 cars each, and the number of trains per day ranged from an average of 4.4 in March to 14.7 in October with an average of 7.7 throughout the year. During the last half of 1934, this carrier handled 6,354 carloads of freight, of which 2,226 were local and 4,017 were interchanged with other carriers. Of the interchange traffic, 2,075 carloads moved to or from points in Utah and 1,942 to or from points in other States. The traffic originated on this carrier moved to points in 31 States and that delivered by it was from points in 26 States. The commodities originated in greatest volume were beets, sugar, potatoes, sand and gravel, milk, canned goods, tomatoes, sheep, cans, and cattle; and those delivered in greatest volume were beets, coal, sand, gravel, and rock, gasoline, ties, lumber, and poles, and cans. This carrier is a party to practically all of the tariffs publishing through rates to or from this territory, and its interchange traffic generally moves on joint rates. It does not perform any intermediate service between other lines.

The carrier owns five 50-ton electric locomotives and two 35-ton electric locomotives, which are used to haul its freight trains. In addition it has three self-propelled cars which have been constructed and equipped for hauling package freight and can be used to pull other cars when necessary. The largest locomotives have factory ratings ranging up to 1,000 tons on the main line, but their practical ratings are generally 550 to 650 tons, or 12 to 14 cars averaging 45 tons each, except at two or three places where such ratings are only 5 to 8 cars up grade. A helper engine is occasionally used, but that is not the usual practice. A train of empties might have a larger number of cars, but it would be subject to air-brake limitations of 30 cars on the principal grades and 45 cars elsewhere. Four electric power substations have capacities ranging from 500 to 1,000 tons of load on their respective sections of the line. The carrier also owns 100 gondola cars, 22 ballast cars, 18 box cars, 14 flat cars, 12 stock cars, and 7 refrigerator cars; but only 98 of the gondolas and 1 flat car are interchangeable with the steam

railroads, and the gondolas were bought for local service. Practically all of the interchange traffic is therefore handled in standard equipment furnished by connecting railroads. Interchange connections are maintained with all of the trunk lines reaching Ogden, also with the Bamberger Electric Railroad Company at the same point, and with the Oregon Short Line at several other points. There are 84 sidings, spurs, or yard tracks with capacities ranging from 2 to 32 cars and averaging 16 cars.

Freight has always contributed a large proportion of the revenues since the completion of the line in 1915. The freight revenues have exceeded the passenger revenues in every year since 1918, the former being more than double the latter in 1926 and 1927, more than three times in 1928 and 1929, more than four times in 1930 and 1931, more than five times in 1932, and more than six times in 1933 and 1934. During the last five years, from 1930 to 1934, inclusive, the freight revenues amounted to $2,021,724.57, and the revenues from passengers, mail, and express totalled $448,941.62, which amounts were approximately 81.9 and 18.1 percent of the total revenues, respectively. The freight revenues reached a peak in 1920 and a somewhat higher peak in 1928, since which they have generally declined but not so much as the passenger revenues.

The carrier compares its line with the steam railroads in various respects. Although some of the steam railroads have as heavy or heavier grades in crossing the Rocky Mountains and the Sierra Nevada, grades and curves such as this carrier has are always avoided on the transcontinental lines wherever possible. It is admitted that steam railroads also operate along city streets in many places, including Ogden and Salt Lake City, Utah, but they do not use any main business streets in Utah cities. The average capacity of the sidings on this carrier's lines is much less than those on the trunk lines within 200 miles of Ogden, which range from an average of 86 to 114 cars on the various lines. The average length of its trains is also much less than those on the same trunk lines, which in 1934 averaged from 7 to 11 cars in passenger trains and from 45.1 to 63 cars in freight trains. The average cost of operation in 1934 for enginemen and trainmen on the lines of this carrier was 5.1 cents per car-mile in passenger service and 2.59 cents in freight service, which figures are compared with corresponding costs on the trunk lines ranging from 2.64 to 3.74 cents per

car-mile in passenger service and from 0.57 to 1.12 cents in freight service. Similar comparisons are made with the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, where the average cost in 1929 for enginemen and trainmen in passenger service was 3.08 cents per car-mile on the electrified section and 4.82 cents on the portion operated with steam power, and the corresponding costs in freight service were 1.01 and 1.16 cents respectively. All of the carrier's comparisons were with trunk lines which handle a large amount of transcontinental freight and passenger business. It would be fairer to compare this carrier with steam railroads of similar size or with branch lines of the larger railroads. It is said that there are no independent steam railroads of comparable size in Utah, but such railroads exist elsewhere, and there are undoubtedly branch lines in this same territory.

The carrier endeavors to distinguish its line from other electric railways which have been found not to be interurbans within the same exemption proviso of the Railway Labor Act in Texas Electric Ry., supra; Sacramento N. Ry., 208 I. C. C. 203; and Waterloo, C. F. & N. Ry., 208 I. C. C. 211. It is pointed out that the Texas Electric Railway performs an intermediate service between steam railroads, that the Sacramento Northern Railway is a subsidiary of the Western Pacific Railroad Company, and that the Waterloo, Cedar Falls & Northern Railway sells interline tickets, maintains off-line solicitors, and filed applications to issue securities under section 20a of the Interstate Commerce Act, which exempts interurbans. However, it does not appear that the physical characteristics of the Utah Idaho Central differ greatly from the above-mentioned electric railways, as disclosed by the reported cited. The maximum grades are 2 percent on the Texas Electric, 4.6 percent on the Sacramento Northern, and 6 percent on the Waterloo, Cedar Falls & Northern. Both the Texas Electric and the Waterloo, Cedar Falls & Northern have curves with a radius of 50 feet, and some of the curves on the Sacramento Northern are too sharp for steam locomotives. The percentage of this carrier's right-of-way that is located on public streets or highways is considerably greater than in the case of the Texas Electric and Sacramento Northern but slightly less than the Waterloo, Cedar Falls & Northern. The freight trains of the Utah Idaho Central average somewhat smaller than those of the other three carriers, but its freight revenue is a larger proportion of the total revenues than on any of the others.

The Utah Idaho Central is paid for carrying the mail at rates prescribed in Electric Railway Mail Pay, 58 I. C. C. 455, 98 I. C. C. 737, under an act applicable to "urban and interurban electric railway common carriers". The same is true of the other electric railways which have been found not to be interurbans within the exemption proviso in the Railway Labor Act, but the Commission has never determined the status of this or the other lines under the above-mentioned mail-pay act. During Federal control the Director General of Railroads addressed a letter to the president of this carrier under date of June 29, 1918, which advised that: "Pursuant to the recommendation of the Regional Director, the Utah Idaho Central is relinquished from Federal control". Notwithstanding this letter, the carrier contends that it was never under Federal control, as no orders, directions, or benefits relative to such control were ever received. For the purposes of this proceeding, it is unnecessary to determine whether the carrier was under Federal control prior to June 29, 1918.

The carrier contends that the number, frequency, and smallness of its trains among other things stamp it as an interurban, but none of these were among the factors which division 6 said are the most important in determining whether an electric railway is an interurban or commercial railway in Texas Electric Ry., supra, at page 202:

The Commission's views as to what constitutes an interurban were stated in Rules for Testing Other Than Steam Power Locomotives, supra. Those views should not be lightly departed from after Congress has authorized the Commission to determine the status of electric railways under a similar exemption provision in an act not otherwise administered by us. In harmony with that and similar decisions, we are of the opinion that an electric railway which is engaged in the general transportation of freight, whether the revenue therefrom is greater or less than its passenger revenue, which handles the bulk of such freight in standard equipment similar to that used by the steam railroads, which freely interchanges the same with the steam railroads for transportation to or from points on their lines, a considerable portion thereof being handled in interstate or foreign commerce, and which participates in joint rates with the steam railroads for interstate transportation, has more of the characteristics of a commercial railroad operated by electric

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power than of an interurban as that term is used in the exemption provision under consideration. Of course, there are many other circumstances and conditions which may have a bearing on the question, and some electric railways are of such an unusual character that their status might depend on other things, but we believe the factors referred to are generally the most important and should be given great weight where all of them exist together.

A petition to reopen that decision was denied by the Commission on May 13, 1935. This carrier's traffic complies in every respect with the above-described characteristics of a commercial railroad operated with electric power.

The Utah Idaho Central was found not to be a street, suburban, or interurban electric railway within a similar exemption provision of the Locomotive Inspection Act in Rules for Testing Other than Steam Power Locomotives, 122 I. C. C. 414. The appendix to that report shows that this carrier's freight revenues were less than double its passenger revenues during the years for which the figures were there given, 1923, 1924, and 1925, whereas the present record shows that its freight revenue was more than six times its passenger revenue in 1933 and 1934. Such previous decisions relating to the status of the same carrier under a similar exemption provision should not be lightly departed from in the absence of changed conditions, and such changes as have taken place with respect to this carrier tend to confirm and strengthen the conclusion that it is not a street, interurban, or suburban railway. See Sacramento N. Ry., supra, and Waterloo, C. F. & N. Ry., supra.

In Piedmont & N. Ry. Co., 211 I. C. C. 4, decided October 11, 1935, division 3 said at page 8:

> Previous to the amendment to the Railway Labor Act on June 21, 1934, this Commission had passed upon the status of numerous electric railways under more or less similar exemption provisions in other acts administered by us. Those decisions recognized a class of electric railways which were regarded as more than interurbans and were sometimes referred to as commercial railways operated by electric power. The distinction between them hinged largely upon the amount and character of freight business handled, an interurban being considered primarily a carrier of passengers and its freight traffic largely local. When Congress authorized this

Commission to determine the status of electric railways under the Railway Labor Act, which is not otherwise administered by us, it is reasonable to suppose that it did so because of our experience in passing upon such questions under similar exemption provisions in other acts. This may also be regarded as a pretty good indication that Congress used the word "interurban" in the same sense as the Commission had interpreted that term in its decisions.

In all of the Commission's decisions dealing with the status of electric railways under the same and similar exemption provisions, it has never found one, which derived so large a proportion of its revenue from freight as this carrier does, to be an interurban.

We find that The Utah Idaho Central Railroad Company's lines do not constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of section 1 of the Railway Labor Act, as amended June 21, 1934.

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Reply to Answer of Defendant

47 Comes now the plaintiff in the above entitled action and by way of reply to the affirmative matters set forth in the answer of the defendant herein, admits, denies and alleges as follows:

1. Admits the allegations of paragraph 14 of said answer.

2. Denies each and every allegation contained in paragraphs 15 and 16 of said answer, and alleges affirmatively that said report of said Interstate Commerce Commission referred to in paragraphs 14, 15 and 16 of said answer and the determination of said Commission in said report, that the plaintiff is not an interurban railroad coming within the proviso of Section 1, First, of the Railway Labor Act, is capricious, arbitrary and unreasonable and not based upon any substantial evidence; that no evidence was introduced at said hearing other than that introduced by the plaintiff herein and said report and determination by said Commission is wholly contrary to said evidence introduced at said hearing before said Commission, and said report is unsupported by an evidence whatever taken at said hearing, and alleges further that said Railway Labor Act is unconstitutional, null and void for the reasons set forth in

paragraph 12 of the amended bill of complaint of the plaintiff herein and the amendment thereto, and if said Railway Labor Act is held to be applicable to this plaintiff by virtue of said report, or otherwise, and plaintiff is required to comply with its provisions, it would, as alleged in plaintiff's said amended bill of complaint and the amendment thereto, constitute irreparable damage and injury and result in the confiscation of plaintiff's business and property, in violation of the Fifth Amendment of the Constitution of the United States.

Wherefore plaintiff prays for the relief demanded in its amended bill of complaint on file herein.

THE UTAH IDAHO CENTRAL RAILROAD COMPANY,

By J. A. Howell, One of its Attorneys, Plaintiff.

(Duly verified)

Filed in United States District Court, District of Utah Oct 12—1936 W. B. Wilson, Clerk, By V. P. Ahlstrom, Deputy

Service of Reply to answer acknowledged.

DAN B. SHIELDS, by Scott M. Matheson,
Solicitor for Defendant.

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Answer and Reply to the Answer of the Interstate Commerce Commission, Intervening Defendant Herein

48 Now comes the plaintiff and by way of answer and reply to the answer of the Interstate Commmerce Commission, intervening defendant, admits, denies and alleges as follows:

1. Admits the allegations of the first paragraph of paragraph II of said Answer.

2. Admits that in said proceeding before the Interstate Commerce Commission referred to, the parties thereto, including this plaintiff, were accorded a full hearing; admits that testimony and other evidence introduced on behalf of the plaintiff was submitted to the Commission for consideration by counsel for said parties; admits that at said hearing and subsequently, both orally and in briefs filed in said proceeding,

e question as to whether the plaintiff is an interurban rail-
ad coming within the proviso of Section 1, First, of the Rail-
ay Labor Act, was fully argued and submitted to the Com-
ission on behalf of said parties by their respective counsel;
dmits that thereafter the Commission made and served upon
e plaintiff its report therein, and admits that a true copy
said report is set out in Exhibit A and made a part of said
swer; admits that the last paragraph of said report is as set
t in said answer; and denies each and every other allegation
ntained in paragraphs II, III, IV and V of said answer and
ncluding at the end of page 3 of said answer, and expressly
leges that said report of said Interstate Commerce Commis-
on was capricious, arbitrary and unjust and contrary to the
ncontradicted evidence therein and is wholly without any evi-
nce to support it; that the only evidence introduced at said
aring was the evidence introduced in behalf of The Utah
daho Central Railroad Company; that no evidence was in-
oduced by any of the other parties thereto in conflict there-
ith, and that said evidence introduced by said plaintiff con-
usively showed that the plaintiff is an interurban railroad,
ming within the provisions of the exemption in Section 1,
rst, of said Railway Labor Act, and notwithstanding such
evidence was uncontradicted and conclusively so shows,
said Interstate Commerce Commission arbitrarily, capri-
ciously and unreasonably made a report to the con-
ary, in violation of the rights of the plaintiff, namely, that
e plaintiff is not an interurban railroad coming within the
oviso exempting it from the operation of said Railway Labor
ct, and said report is not supported by any evidence intro-
ced at said hearing and the same is not binding on this
aintiff.

Plaintiff further alleges that said Railway Labor Act is un-
nstitutional, null and void for the reasons set forth in para-
aph 12 of the amended bill of complaint herein and the
endment thereto, and that if the Railway Labor Act is held
be applicable to this plaintiff by virtue of said report or-
erwise it would result in the confiscation of plaintiff's busi-
s and property, in violation of the Fifth Amendment of the
nstitution of the United States.

Plaintiff reiterates its prayer for the relief demanded in its
ended bill of complaint on file herein.

THE UTAH IDAHO CENTRAL RAILROAD COMPANY,

By J. A. Howell, One of its Attorneys, Plaintiff.

J. H. DeVine, J. A. Howell, David L. Stine, Attorneys and Solicitors for Plaintiff, 625 Eccles Building, Ogden, Utah.

(Duly verified)

Service by copy of the foregoing answer and reply to the answer of the Interstate Commerce Commission, intervening defendant herein, hereby admitted and acknowledged this 12th day of October, 1936.

DANIEL W. KNOWLTON, Chief Counsel,
NELSON THOMAS, Attorney,
Solicitors for Intervening Defendant.

Filed in United States District Court, District of Utah Oct 12, 1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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Stipulation—October 12, 1936

50 It is stipulated by and between the respective parties to the above entitled suit, by and through their respective attorneys and solicitors, that the same may be transferred from the Central Division to the Northern Division of the above named Court and that all further proceedings in said cause be had in said Northern Division, including the trial thereof and all subsequent proceedings.

Dated: Oct. 12, 1936.

J. H. DeVINE,
J. A. HOWELL,
DAVID L. STINE,
Attorneys and Solicitors for Plaintiff.

DAN B. SHIELDS, United States Attorney for the District of Utah.

By Scott M. Matheson, Asst. U. S. Attorney.

INTERSTATE COMMERCE COMMISSION,
By Nelson Thomas, Its Attorney and solicitor.

Filed in United States District Court, District of Utah Oct 12, 1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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### Minute Entry—October 12, 1936

At this 12th day of October, 1936, plaintiff appearing by A. Howell, D. L. Stine and C. D. Cass, its solicitors, defendant by Scott M. Matheson, Assistant United States Attorney, and intervening defendant, Interstate Commerce Commission by Nelson Thomas, its solicitor, and this case having been by written stipulation transferred from Central to Northern Division for trial and all further proceedings, and having come on for trial, amendment to amended complaint was filed by leave of court, answer to reply and reply to answer filed and certain documentary evidence was introduced, and on the part of plaintiff P. H. Mulcahy was sworn and examined and the hour of *adjournment* having been reached the *the* further trial of this case was continued to 10:00 A. M. tomorrow morning the 13th instant.

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### Minute Entry—October 13, 1936

At this 13th day of October, 1936, come again said parties by their respective solicitors as aforesaid and the trial of this case is resumed. Certain documentary evidence was introduced and on the part of plaintiff P. H. Mulcahy was recalled and examined and C. D. Cass and Nelson Thomas were sworn and examined and plaintiff rests. Defendant introduced certain documentary evidence and rested, and the hour of adjournment having been reached the further trial of this case was continued to ten A. M. tomorrow morning the 14th instant.

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### Minute Entry—October 14, 1936

At this 14th day of October, 1936, come again said parties by their respective solicitors as aforesaid and the trial of this case is resumed. Certain documentary evidence was introduced and Frank Otterstrom and J. A. Howell was sworn and examined and P. H. Mulcahy was recalled and examined and plaintiff and defendants rest. The Court heard the arguments of counsel to the hour of adjournment when the further trial of this case was continued to ten o'clock A. M. tomorrow morning the 15th instant.

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### Minute Entry—October 15, 1936

At this 15th day of October, 1936, come again said parties by their respective solicitors as aforesaid and the court heard the

further arguments of counsel and found in favor of plaintiff, findings of fact, conclusions of law and decree this day signed and filed to which defendants attorneys duly excepted, and said defendants are given sixty days in which to prepare and serve proposed statement of evidence.

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Findings of Fact, Conclusions of Law.

52 Be It Remembered, that the above entitled cause came on before the above named court, before the Honorable Tillman D. Johnson, presiding, at Ogden, Utah, on Monday, the 12th day of October, 1936, pursuant to a written stipulation of the parties on file in said cause transferring the same from the Central Division of said court to the Northern Division thereof, for trial and for all other and further proceedings in said cause upon the issues made by the plaintiff's amended bill of complaint for injunction and petition for declaratory judgment, and the amendment thereto, and the answer of the defendant, and the reply of the plaintiff thereto, and the answer of the intervening defendant, Interstate Commerce Commission, and the answer and reply of the plaintiff thereto, J. H. DeVine, J. A. Howell, David L. Stine, C. D. Cass and Robert E. Quirk appearing as attorneys and solicitors for the plaintiff, Scott M. Matheson, Assistant United States Attorney, appearing as attorney and solicitor for the defendant, and Daniel W. Knowlton and Nelson Thomas appearing as attorneys and *solictors* for the intervening defendant, and the court having heard the evidence introduced by the respective parties and the respective parties having rested their causes, and the court having heard the arguments of counsel for the respective parties, and the matter having been submitted to the court for its decision, now comes the court and makes, enters and files the following findings of fact.

Findings of Fact.

53 1. That plaintiff The Utah Idaho Central Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, of which it is a citizen, qualified under the laws of the States of Utah and Idaho to do business in said States, with its principal office and place of business located in Ogden City, Weber County, State of Utah; that the defendant Dan B. Shields resides in Salt Lake City, Salt Lake County, State of Utah, in the District of Utah,

Central Division, and is the United States Attorney duly appointed, qualified and acting in and for said District of Utah, and he is sued herein individually and as such United States Attorney.

2. That this is a suit in equity of a civil nature, arising under the laws of the United States, and presents and involves an actual controversy between the plaintiff and the defendant, and the matter in controversy as to the plaintiff, exclusive of interest and costs, exceeds the sum of $3,000.00, as will be hereinafter more particularly alleged, and relates to an Act of Congress regulating Interstate Commerce, to wit, "An Act to amend the Railway Labor Act, approved June 21, 1934, entitled: 'An Act to amend the Railway Labor Act, approved May 20, 1926, and to provide for the prompt disposition of disputes between carriers and their employes' ", hereinafter called the Railway Labor Act.

3. That plaintiff brings this suit to prevent irreparable injury and damage to it and its business and property and in the transportation of persons and property and to prevent and restrain the defendant individually and in his official capacity from the threatened enforcement of fines and penalties against the plaintiff and its officers and agents for alleged violation of any of the provisions of the Railway Labor Act and for any alleged failure or refusal on their part respectively to conform to the provisions of said Act.

54 4. That The Utah Idaho Central Railroad Company is engaged in the business of operating as a common carrier an electric interurban line of railroad between Ogden City in the County of Weber, State of Utah, and Preston, in the County of Franklin, State of Idaho, for the transportation of passengers, freight, express and baggage between said terminal points and intermediate points, and is engaged also in the operation as a common carrier of a bus line upon the State and County highways between said terminal points and all intermediate points substantially *parallelling* said line of interurban electric railroad for the transportation of passengers, baggage and express.

5. That prior to the year 1914, there was operated in the City of Ogden, in Weber County, State of Utah, a street car system, and also an interurban line running from the north city limits of Ogden City, to Hot Springs, Utah, a distance of

approximately ten miles. That these properties prior to the year 1914 were acquired by Ogden Rapid Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, and electrified as an electric interurban railroad and extended to Brigham City, Box Elder County, State of Utah; that prior to said year 1914, there was operated in the City of Logan a street car system, which prior to said year had been electrified and extended as an interurban railroad northward to Smithfield, Utah, and southward to Wellsville, Utah, which said interurban railroad was owned and operated by Logan Rapid Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Utah; that these city and interurban railroads had been constructed by and were being operated by a group of citizens of northern Utah, interested in the agricultural, industrial and social development of northern Utah and that portion of the State of Idaho which constitutes a part of Cache Valley, which is for the most part located in Utah, and who were
55 desirous of furnishing to that territory as a whole a transportation system which would better serve its needs than the steam railroad operating therein, namely, the Oregon Short Line Railroad, and to that end determined to consolidate the two electric interurban properties above referred to, and accordingly in the year 1914 the said Ogden Rapid Transit Company and said Logan Rapid Transit Company were, under the laws of Utah, consolidated into a corporation known as Ogden Logan & Idaho Railway Company, which continued to own, control and operate the properties formerly owned and operated by its constituent companies and in precisely the same and *idential* manner in which it had been operated by its constituent companies, and rebuilt that portion of the line running northward from Ogden City to Brigham City, and constructed a new electric line from Brigham City north over the Collinston divide, thus connecting the interurban lines formerly operated by its constituent companies, and also constructed a new line from the northern terminus of the line of said Logan Rapid Transit Company to Preston, Idaho, the principal city in the northern part of Cache Valley, a distance of six miles north of the Utah line; that thereafter said Ogden Logan & Idaho Railway Company, which by an amendment of its articles of incorporation changed its corporate name to Utah Idaho Central Railroad Company, continued to own, control and operate the electric street car system in the City of

ogan, and the interurban electric line, which had been de-
eloped out of the electric interurban properties of its con-
ituent companies, in precisely the same manner they had been
perated from the time of their construction, until the year
920, when the city street car system in Ogden City was segre-
ated from the interurban operations of the company and trans-
rred to the Utah Rapid Transit Company; that the operation
f the interurban line from Ogden, Utah, to Preston, Idaho, and
he operation of the street car system in Logan City remained
ith the Utah Idaho Central Railroad Company until the
year 1926, when that company went through a receiver-
6 ship in this court, which resulted in the properties being
acquired by the plaintiff The Utah Idaho Central Rail-
oad Company, and the same have since been owned, controlled
nd operated by said company in precisely the same manner
ney had been operated theretofore since their construction,
xcept that the plaintiff company has instituted a bus opera-
ion in *lieu* of the street car lines in Logan City and has in-
ituted a bus system over the State and County highways sub-
tantially *parallelling* its rail line from Ogden, Utah, to
reston, Idaho, for the transportation of passengers, baggage
nd express.

6. That the resources of the territory served by plaintiff
orth of Ogden to the Collinston divide, being the northern
art of the Salt Lake Valley, and the resources of the Cache
alley hereinbefore referred to are wholly agricultural in
haracter and the only industrial development of which the
erritory has been or will be capable is the construction and
peration of processing plants to enable the agricultural prod-
cts of the territory to reach the outside market, such as beet
ugar factories, vegetable packing plants, milk condensing
lants, etc.; that from the time of the construction of the
nterurban line of railroad heretofore referred to and now
wned, controlled and operated by the plaintiff, this industrial
levelopment has been fostered by it by collecting the raw
roducts from the fields and delivering them to the processing
lants located on its line, and delivering to those plants the
naterials necessary for such processing from outside the terri-
ory served by the plaintiff, such as coal, lime, etc. by transport-
ing by means of its interurban line the processed products from
the processing plants and delivering them to the steam
57 railroads for transportation to the outside markets;
that by means of its interchange with steam railroads

wholly as an initiating or receiving carrier without discrimination as to preference as to which steam railroad is used, plaintiff has also fostered the agricultural development of the territory by delivering to the farms such needed merchandise from the outside, and delivering from said farms to the outside market such agricultural products as could be marketed without being processed; plaintiff has likewise fostered the social development of the territory by the transportation to and from the farms to the larger communities of the people inhabiting the territory, and especially in the transportation of the school children, thus enabling such schools to be restricted to the larger communities so as to be fully equipped to service their purposes and yet serving all of the children of the territory equally.

7. To meet these needs of the people of the territory, agricultural, industrial and social, that type of transportation operation which is peculiarly the electric interurban type was and is necessary, namely, short speedy trains operated at frequent intervals, making frequent stops, in many instances where no agents are maintained, for the transportation of both passengers and freight, practically to and from the individual farms, and to and from the processing plants and community centers, and to and from the outside world, to enable the products of the soil to reach their market either as raw or as processed products, and the products from the outside to reach the farms and processing plants and enable the people of the territory to keep in touch with the outside world.

8. That in harmony with said purposes as above out-
58 lined, the interurban line of the plaintiff was constructed and has ever since been maintained and operated, and its physical characteristics are such as to limit its operations to that of an interurban railway; that all of its physical elements, motive power, equipment, track construction, length of spur and sidings, curvature and grades are co-ordinated into an integral whole, which necessitates an operation which is peculiar to interurban electric railroads and that continuously since its construction it has been so operated and that without a complete change of all its physical elements it could not operate except as an interurban electric railroad and could not be operated as ordinary commercial steam railroads are commonly operated.

9. That Section 1 of the Railway Labor Act defines the term "carrier" as follows:

Section 1. When used in this Act and for the purposes of this Act:

"First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property tarnsported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier;' Provided, however, that the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operated as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

59 10. The plaintiff is a railway operated by electric power and is known as and in fact is now, and ever since its construction has been, an interurban electric railway as said term is used in and within the purview of said Railway Labor Act; that it is not now and never has been operated as a part of a general steam railroad system of transportation, and it is not now and never has been any part of the general steam railroad system of transportation operated by any other motive power; that none of its stock or securities is owned by any general steam railroad system of transportation or by any steam railroad company, and no general steam railroad system of transportation and no steam railroad company, nor any of its officers or agents have any control or voice whatever in its management or operation.

11. That under the Interstate Commerce Act, Railway Mail Pay Act and other Acts of Congress administered by the Inter-

state Commerce Commission, the Commission has given the plaintiff and other electric railways a different designation and classification from that given common carriers by railroad subject to the Railway Labor Act, and the Commission as well as various courts and other administrative agencies, State and Federal, have designated plaintiff and similar electric railways as interurban electric railways.

12. That in said Railway Labor Act certain terms are defined, as such terms are therein used, and certain omissions and acts of commission on the part of the carrier subject thereto, its agents and officers, are made penal offenses, involving heavy fines or imprisonments, or both.

By Section 4, First, of the Railway Labor Act, there is created a board known as the National Mediation Board, which is given certain powers and duties in connection with the administration of said Act. Among such duties and powers is the duty to prescribe the form of notice to carrier employes, as set out in Section 2, Eighth, thereof; that the Mediation Board has heretofore prescribed the form of notice provided for in the eighth paragraph of Section 2 of the Act and ordered that it be posted as therein specified, thereby demanding that all employes be thereby notified that all disputes between the carrier and them will be handled in accordance with the provisions of said Act; that plaintiff has not complied with said order; that if plaintiff continues to fail to comply with said order and otherwise fails to comply with the provisions of said Act, it will subject itself to proseeutions for the penalties hereinbefore set out, notwithstanding that as an interurban electric railroad it is not subject to the provisions thereof; that if it does comply with said order and with the provisions of said Act, it thereby admits that it is subject to the provisions thereof and thereby voluntarily submits itself to the provisions thereof, notwithstanding it is not subject thereto, and such compliance on the part of the plaintiff, notwithstanding it is not subject thereto, will subject it to immediate and irreparable injury and damage, in that such compliance will unlawfully deprive plaintiff of the liberty of contract and it will be compelled to negotiate with its trainmen and other employes, through a representative or representatives of their own choosing, regardless of who such representative or representatives may be, and regardless of whether such representative or representatives are or are not employes of the plaintiff, and in that such compliance will result in

emands for increase of wages on the part of employes, and de-
ands for rules and working conditions with respect thereto
hat the plaintiff is unable to grant, because its financial condi-
ion will not permit it so to do without immediately impairing
nd ultimately destroying its ability to continue to operate and
o serve the public in the manner in which it has served it in
he past, and this notwithstanding plaintiff has never had any
isputes with its employes which have not been amicably ad-
usted, and notwithstanding it has continuously operated under
ontracts with organizations of its employes which are ab-
olutely independent of it and in no wise under its control, as
o rates of pay, rules and working conditions, because plain-
iff's employes will be influenced to abandon their present or-
ganizations and to join those organizations of employes
61 on transcontinental steam railroads throughout the
country, on the promise that they will receive the higher
or so-called steam railroad standard wages and the different
or so-called standard rules and working conditions prevailing
hereon, which said organizations represent the employes of
aid transcontinental steam railroads, and will then demand
uch higher wages and such different rules and working condi-
ions which prevail on said transcontinental steam railroads,
which said wages and rules and working conditions are unwar-
anted and inapplicable to plaintiff, and if plaintiff refuses to
pay such wages and to adopt such rules and working conditions
labor disputes and strikes will result, which will inflict such
financial losses upon the plaintiff that it will be unable to con-
tinue to operate and to serve the public in the manner in which
it has been doing in the past, and in that under Section 3 of
the Act disputes with reference to interpretation of agreements
between plaintiff and its employes, and as to grievances of plain-
tiff's employes against it, and as to the discharge of any of its
employes, will have to be submitted to the National Railroad
Adjustment Boards which have been created under said Act
without the plaintiff having any part in the selection of the mem-
bers thereof.

13. That the defendant Dan B. Shields, United States At-
torney for the District of Utah, is charged by said Railway La-
bor Act with the enforcement of said Act and with the duty of
filing suits and prosecuting plaintiff and its officers and agents
under the direction of the Attorney General, for violation of
said paragraph of said Section of the Act; and is by law charged
with the duty of prosecuting in this District for all crimes and

delinquencies cognizable under the authority of the United States; that the defendant has threatened to file suits and prosecute the plaintiff and its officers and agents for the failure upon the part of the plaintiff to comply with the Railway Labor Act, and that unless the relief herein prayed for is granted he will do so; that under the circumstances herein alleged
62 plaintiff is without adequate remedy at law and that it is *emtitled* as of right to immunity from the severe and cumulative penalties pending an orderly and judicial test of the application of said Act to plaintiff, and those particular portions thereof aforesaid, and the question of whether or not it is subject to the provisions of said Act; and in order that such test may be initiated and determined judicially, it should be protected against any prosecution or prosecutions for violation of said penal provisions of said Act, or any of them, pending such judicial determination.

14. That on the 17th day of May, 1935, pursuant to a request of the National Mediation Board, made in accordance with authority conferred upon said Board by Section 1 of the Railway Labor Act as amended by the Act of June 21, 1934, the intervening defendant, Interstate Commerce Commission, instituted a proceeding entitled; "Railway Labor Act, Docket No. 12, Utah Idaho Central Railroad Company," for the purpose of determining whether the Utah Idaho Central Railroad was either a street, or an interurban, or a suburban, electric railway, within the meaning of said Section 1 of said Railway Labor Act, as amended by said Act of June 21, 1934; that in said proceeding before said Interstate Commerce Commission referred to, the parties thereto, including the plaintiff, were accorded a full hearing; that the only evidence introduced at said hearing was the evidence introduced in behalf of The Utah Idaho Central Railroad Company and that no evidence was introduced by any of the other parties thereto in conflict therewith; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, the question as to whether the plaintiff is an interurban railroad coming within the proviso of Section 1, First, of the Railway Labor Act, was fully argued and submitted to the Commission on behalf of said parties by their respecitve counsel; that thereafter the Commission made and served upon the plaintiff its report therein; that
63 the last paragraph of said report reads as follows:

"We find that the Utah Idaho Central Railroad Company's lines do not constitute a street, interurban or suburban

lectric railway, within the meaning of the exemption proviso
the first paragraph of Section one of the Railway Labor Act,
amended June 21, 1934."

That said uncontradicted evidence of the plaintiff introduced
t said hearing shows and the court finds upon said evidence
nd the transcript of the record of said hearing as introduced
this cause, which is the entire record of evidence before said
Commission at said hearing, that plaintiff is a railway operated
y electric power and is known as, and in fact is now and ever
ince its construction has been an interurban electric railway, as
aid term is used in and within the purview of said Railway La-
or Act; that it is not now and never has been operated as a part
f a general steam railroad system of transportation and it is not
ow and never has been a part of the general steam railroad
ystem of transportation operated by any other motive power,
nd that said determination of said Commission that the plain-
iff does not constitute a street, interurban, or suburban electric
ailway within the meaning of the exemption proviso in the
rst paragraph of Section 1 of the Railway Labor Act, as
mended June 21, 1934, is against and contrary to the law.

From the foregoing Findings of Fact the Court states the
ollowing Conclusions of law:

1. That plaintiff is a railway operated by electric power
nd is known as and in fact is now, and ever since its con-
truction has been, an interurban electric railway as said term
s used in and within the purview of the Railway Labor Act, as
mended June 21, 1934; that it is not now and never has been
perated as a part of a general steam railroad system of trans-
ortation, and it is not now and never has been any part of the
eneral steam railroad system of transportation operated by
ny other motive power; and that plaintiff is exempt from the
roviso of said Railway Labor Act.

2. That the uncontradicted evidence of the plaintiff intro-
duced at said hearing as introduced in this cause, which
is the entire record of evidence before said Commission
at said hearing, shows that plaintiff is a railway operated
y electric power and is known as, and in fact is now and
ver since its construction has been an interurban electric
ailway, as said term is used in and within the purview of
aid Railway Labor Act; that it is not now and never has been
perated as a part of a general steam railroad system of trans-

portation and it is not now and never has been a part of the general steam railroad system of transportation operated by any other motive power, and that said determination of said Commission that the plaintiff does not constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934, is contrary to and is against the law.

3. That the plaintiff is exempt from all the provisions of said Railway Labor Act, as amended June 21, 1934.

4. That the defendant individually and as United States Attorney for the District of Utah, and all persons acting under, by or through him, be permanently enjoined and restrained from initiating or prosecuting any suit or suits against the plaintiff, its officers or agents, or any of them, based upon the alleged violation by them, or any of them, or any of the provisions of the Railway Labor Act, as amended June 21, 1934, or based upon the alleged violation of Section 2 thereof, or either of them.

Let judgment be entered accordingly.

By The Court

TILLMAN D. JOHNSON, Judge.

Filed in United States District Court, District of Utah Oct 15, 1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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Decree

65 This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, to wit:

1. That plaintiff is a railway operated by electric power and is known as and in fact is now, and ever since its construction has been, an interurban electric railway as said term is used in and within the purview of the Railway Labor Act, as amended June 21, 1934; that it is not now and never has been operated as a part of a general steam railroad system of transportation, and it is not now and never has been any part of the general steam railroad system of transportation operated by any other motive power; and that plaintiff is exempt from the provisions of said Railway Labor Act.

2. That the uncontradicted evidence of the plaintiff introduced at said hearing as introduced in this cause, which is the entire record of evidence before said Interstate Commerce Commission at said hearing, shows that plaintiff is a railway operated by electric power and is known as, and in fact is now and ever since its construction has been an interurban electric railway, as said term is used in and within the purview of said Railway Labor Act; that it is not now and never has been operated as a part of a general steam railroad system of transportation and it is not now and never has been a part of the general steam railroad system of transportation operated by any other motive power, and that said determination of said Interstate Commerce Commission that the plaintiff does not constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934, is contrary to and is against the law.

3. That the plaintiff is exempt from all of the provisions of said Railway Labor Act, as amended June 21, 1934.

4. That the defendant individually and as United States Attorney for the District of Utah, and all persons acting under, by or through him, be permanently enjoined and restrained from initiating or prosecuting any suit or suits against the plaintiff, its officers or agents, or any of them, based upon the alleged violation by them, or any of them, of any of the provisions of the Railway Labor Act, as amended June 21, 1934, or based upon the alleged violation of Section thereof, or either of them.

Given and entered this 15th day of October, 1936, in open Court.

By the Court.

TILLMAN D. JOHNSON, Judge.

Filed in United States District Court, District of Utah. Oct 15—1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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Order—November 23, 1936

Good cause appearing therefor, and on motion of Dan B. Shields, United States Attorney for the District of Utah, and Scott M. Matheson, Assistant United States Attorney for said District,

It Is Hereby Ordered, that the defendant herein, Dan B. Shields, individually and as United States Attorney for the District of Utah, have to and including January 2, 1937, within which to serve and lodge his Bill of Exceptions in the above entitled case.

Dated at Salt Lake City, Utah, this 23d day of November, A. D. 1936.

TILLMAN D. JOHNSON, Judge.

Filed in United States District Court, District of Utah Nov 23, 1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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Order—December 21, 1936

Good cause appearing therefor, and on motion of Dan B. Shields, United States Attorney for the District of Utah, and Scott M. Matheson, Assistant United States Attorney for said District,

It Is Hereby Ordered, that the defendant herein, Dan
67 B. Shields, individually and as United States Attorney for the District of Utah, have to and including January 30, 1937, within which to serve and lodge his Bill of Exceptions in the above entitled case.

Dated at Salt Lake City, Utah, this 21st day of December, A. D. 1936.

TILLMAN D. JOHNSON, Judge.

Filed in United States District Court, District of Utah Dec 21—1936 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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Petition for Appeal

To the Honorable Tillman D. Johnson, Judge of the United States District Court for the District of Utah, Northern Division:

Your petitioners, Dan B. Shields and Interstate Commerce Commission, considering themselves aggrieved by the decree entered in the above entitled cause on the fifteenth day of October, 1936, for the reasons specified in the assignment of errors, which is filed herewith, pray that they may be permitted to take an appeal therefrom to the United States Circuit Court of Appeals for the Tenth Circuit; that a citation be issued in

accordance with the law; and that an authenticated transcript of the record, proceedings and exhibits on the trial be forwarded to the United States Circuit Court of Appeals for the Tenth Circuit at Denver, Colorado.

Dated this 12th day of January, 1937.

LEO F. TIERNEY,
Special Assistant to the Attorney General,

DANIEL W. KNOWLTON,
Chief Counsel, Interstate Commerce Commission,

SCOTT M. MATHESON,
Assistant United States Attorney,
Attorneys for Dan B. Shields, Defendant.

NELSON THOMAS,
Assistant Counsel, Interstate Commerce Commission,
Attorneys for Interstate Commerce Commission.

Filed in United States District Court, District of Utah Jan 12—1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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Order Allowing Appeal

68 The appellants in the above entitled case, and each of them, having prayed for the allowance of an appeal in this cause to the United States Circuit Court of Appeals for the Tenth Circuit from the judgment and decree made and entered in the above entitled suit by the District Court of the United States for the District of Utah, Northern Division, on the fifteenth day of October, 1936, and having presented and filed their petition for appeal, assignment of errors and prayer for reversal.

It Is Ordered that an appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the decree heretofore entered herein be and the same is allowed, and it is further ordered that the clerk of the Court appealed from shall prepare and certify a transcript of the record, proceedings, judgment and decree in this cause and transmit the same to the United States Circuit Court of Appeals for the Tenth Circuit at Denver, Colorado.

Dated this 12th day of January, 1937.

TILLMAN D. JOHNSON, United States District Judge.

Filed in United States District Court, District of Utah Jan 12—1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

## Assignment of Errors

Come Now Dan B. Shields, defendant, and Interstate Commerce Commission, intervening defendant, and file the following assignment of errors upon which they will rely upon the appeal to the United States Court of Appeals for the Tenth Circuit from the decree made by this Honorable Court on the fifteenth day of October 1936, in the above entitled cause, and say that this Court erred in the following respects:

1. The Court erred in ordering, adjudging and decreeing the plaintiff to be an interurban electric railway upon evidence independent of the record before the Interstate Commerce Commission because this was in excess of the Court's jurisdiction in that its sole jurisdiction is to detemine whether or
69 not the report and determination of the Interstate Commerce Commission that the plaintiff is not an interurban electric railway is arbitrary or unreasonable or not based upon substantial evidence.

2. The Court erred in ordering, adjudging and decreeing, upon the record before the Interstate Commerce Commission, that the complainant "is not now and never has been operated as a part of a general steam railroad system of transportation and is not now and never has been a part of the general steam railroad system of transportation operated by any other motive power and is exempt from the provisions of the said Railway Labor Act" because the Court obviously was without jurisdiction to make such determination de novo in that Section 1, First, of the Railway Labor Act (45 U. S. C. 51) solely empowers the Interstate Commerce Commission originally to make such a determination, which the Interstate Commerce Commission has not done.

3. The Court erred in *ordered*, adjudging and decreeing the plaintiff to be within the exemption proviso of Section 1 of the Railway Labor Act (45 U. S. C. 51) because it weighed ab initio the evidence before the Interstate Commerce Commission and did not limit its inquiry as to whether or not there was substantial evidence before the Commission to support its determination.

4. The Court erred in finding without any evidence to support the conclusion that the United States Attorney had threatened to prosecute the plaintiff for violations of the Railway Labor Act.

5. The Court erred in enjoining the defendant, United States Attorney, from prosecuting the plaintiff for violations of the Railway Labor Act for the reason that the Court made no finding that there was no substantial evidence before the Interstate Commerce Commission to support its determination that the complainant is not a street, suburban or interurban electric railway within the proviso of Section 1, First, of the Railway Labor Act.

6. The Court erred in ordering, adjudging and decreeing that the plaintiff is exempt from all the provisions of the Railway Labor Act as amended June 1, 1924, for the reason that the Court was without jurisdiction to make such a determination.

Prayer for Reversal

70 Wherefore, and in order that the foregoing assignment of errors may be and appear of record, defendants present the same to the Court and pray that such disposition be made thereof as in accordance with law and the statutes of the United States in such case made and provided; and complainants pray that said decree entered on the fifteenth day of October, 1936 be reversed and a decree be entered dismissing plaintiff's bill of complaint.

Dated this 12th day of January, 1937.

LEO F. TIERNEY,
Special Assistant to the Attorney General.

SCOTT M. MATHESON,
Assistant United States Attorney,
Attorneys for Dan B. Shields, Defendant.

DANIEL W. KNOWLTON,
Chief Counsel, Interstate Commerce Commission.

NELSON THOMAS,
Assistant Counsel, Interstate Commerce Commission.
Attorneys for Interstate Commerce Commission.

Filed in United States District Court, District of Utah Jan 12—1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy.

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## Citation On Appeal

The United States of America,

To The Utah-Idaho Central Railroad Company, a corporation and to J. H. DeVine, J. A. Howell and David L. Stine, its attorneys, Greeting:

You are hereby cited and admonished to be and appear
71 in the United States Circuit Court of Appeals for the Tenth Circuit at the City of Denver, Colorado, forty days from and after the day this citation bears date, pursuant to an appeal from the United States District Court in and for the District of Utah, Northern Division, wherein Dan B. Shields, individually and as United States Attorney for the District of Utah, and the Interstate Commerce Commission are appellants, and you, The Utah-Idaho Central Railroad Company, are appellee, to show cause, if any there be, why the judgment rendered against the said appellants from which said appeal was allowed should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Tillman D. Johnson, Judge of the United States District Court for the District of Utah, this 12th day of January, A. D. 1937.

(Seal) TILLMAN D. JOHNSON, JUDGE.

Attest:

W. B. WILSON, Clerk.

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## Affidavit Of Service

72 Winnie Esterak, being first duly sworn upon her oath, deposes and says:

That she is a Clerk in the office of the United States Attorney for the District of Utah; that on January 12, 1937, she served Petition for Appeal, Assignment of Errors, Order Allowing Appeal, and Citation on Appeal in the above entitled cause on the Complainant, The Utah-Idaho Central Railroad Company, a corporation, by placing a true copy of said Petition for Appeal, Assignment of Errors, Order Allowing Appeal and Cita-

tion on Appeal in a franked envelope of the United States addressed to Counsel for said The Utah-Idaho Central Railroad Company, as follows, to wit:

Messrs. DeVine, Howell & Stine,
Lawyers,
David Eccles Building,
Ogden, Utah;

and deposited the said *enbelope* in the United States Post Office at Salt Lake City, Utah, for mailing and delivery to said Messrs. DeVine, Howell & Stine, Counsel for said complainant.

(Seal) WINNIE ESTERAK.

Subscribed and sworn to before me this 12th day of January, A. D. 1937. W. B. Wilson, Clerk, United States District Court, For the District of Utah.

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Order

Good cause appearing therefor, and on motion of Scott M. Matheson, Assistant United States Attorney for the District of Utah,

It Is Hereby Ordered, that the defendant herein, Dan B. Shields, shall have to and including April 27, 1937, within which to docket his appeal in the United States Circuit Court of Appeals for the Tenth Circuit in the above entitled case.

Dated at Salt Lake City, Utah, this 24 day of March, A. D. 1937.

(Seal) TILLMAN D. JOHNSON, Judge

Attest: W. B. WILSON, Clerk.

By V. P. AHLSTROM, Deputy.

Filed in United States District Court, District of Utah. Mar. 24, 1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy.

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Order—January 29, 1937

73 Good cause appearing therefor, and on motion of Dan B. Shields, United States Attorney for the District of Utah, and Scott M. Matheson, Assistant United States Attorney for said District,

It Is Hereby Ordered, that the defendant herein, Dan B. Shields, individually and as United States Attorney for the District of Utah, have to and including, February 15, 1937, within which to serve and lodge his Bill of Exceptions in the above entitled case.

Dated at Salt Lake City, Utah, this 29th day of January, A. D. 1937.

TILLMAN D. JOHNSON, Judge.

Filed in United States District Court, District of Utah Jan 29—1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy.

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Order—February 13, 1937

Good cause appearing therefor, and on motion of Dan B. Shields, United States Attorney for the District of Utah, and Scott M. Matheson, Assistant United States Attorney for said District,

It Is Hereby Ordered, that the defendant herein, Dan B. Shields, individually and as United States Attorney for the District of Utah, have to and including March 10, 1937, within which to serve and lodge his Bill of Exceptions in the above entitled case.

Dated at Salt Lake City, Utah, this 13th day of February, A. D. 1937.

TILLMAN D. JOHNSON, Judge.

Filed in United States District Court, District of Utah Feb 13—1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy.

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Statement of Evidence in Accordance With Equity Rule 75

74 At the hearing of the above-entitled cause before Tillman D. Johnson, Judge of the District Court of the United States for the District of Utah, begun on October 12, 1936, the following proceedings were had, evidence offered and given, rulings made by the Court and exceptions taken by the parties and entered by the Court.

Appearances: Devine, Howell and Stine (Mr. J. A. Howell and Dr. David L. Stine appearing) Mr. C. D. Cass, Mr.

obert E. Quirk, representing the plaintiff. (1)* Mr. Scott . Matheson, Assistant United States Attorney, representing he defendant. Mr. Nelson Thomas, representing the intervening defendants. (2)

It was stipulated between counsel for all parties in open court that the case be transferred from the United States District Court for the Central Division to the Northern ivision of Utah.

Plaintiff by leave of court filed an amendment to the amended ill of complaint. (3)

It was thereupon agreed in open court that the answers of he defendant and intervening defendant to the amended bill f complaint, in so far as they applied to paragraph 12 thereof, hould be construed to be answers to the amendment to paragraph 12, it being further understood that the general denial ppearing on page 4 of the intervening defendant's answer to he amended bill of complaint should be taken as applicable lso to the amendment to the amended bill of complaint. (4)

Plaintiff by leave of court filed a reply to the answer of efendant Shields.

Plaintiff by leave of court filed an answer and reply to the nswer of intervening defendant Interstate Commerce Commission. (5)

Plaintiff by leave of court was authorized to change the ord "operated" to "create" in paragraph 12, second line from he end of the second paragraph of the amended bill of complaint. (6)

Thereupon to maintain the issues as joined, the plaintiff and efendants offered in evidence:

P. H. Mulcahy, being called as a witness by and on be-
6 half of the plaintiff and having been first duly sworn, testified, in substance, as follows:

I live in Ogden, Utah, and am General Manager of the Utah daho Central Railroad Company, the plaintiff in this suit, aving held that position since 1922. Prior to that time I was ssistant General Manager and Auditor of said company. I as formerly connected with the Southern Pacific Company rom 1911 to 1917. (36)

*Figures in parenthesis indicate pages of official reporter's transcript.

I have prepared and here present a series of exhibits which show the location of and the characteristics of the plaintiff's railroad line.

(Said exhibits were thereupon marked Plaintiff's Exhibits 1 to 28, inclusive)

Mr. Howell: 1 to 28 inclusive. There may be some other exhibits I will have to use on other phases of the case, but on the question of the characteristics of the railroad those are all.

The Court: Then you may proceed, and refer to your exhibits by their number.

Q. (By Mr. Howell): Now, referring to exhibit which has been marked for identification Plaintiff's Exhibit 1, I will ask you, Mr. Mulcahy, what that exhibit is designed to show?

Mr. Matheson: If the court please, on behalf of the defendant Dan B. Shields may it be understood that we may have (37) an objection to any and all testimony and exhibits other than the record which was before the Interstate Commerce Commission and upon which it based its findings of February 27, 1936, in so far as the binding force and effect of the findings of the Commission are concerned in this lawsuit—and an exception?

The Court: No, I would not give you that exception;
77 that is the very thing I am not going to do. I am not going to consider the findings of the Interstate Commerce Commission except upon its own record.

Just like telling a jury this is competent against one person but if you are trying a dozen men together it might be competent as to one.

This evidence is competent as far as it relates to the particular question of the constitutionality of this Act as applied to this defendant.

Mr. Matheson: And not the binding force and effect of the decision of the Commission?

The Court: Hasn't anything to do with that particular case at all.

Mr. Matheson: It is so understood, your Honor,—to preserve our record.

The Court: I have intimated heretofore, as I now view it, if I make any finding with respect to the report of the Interstate Commerce Commission it will be based solely upon what was before them.

As I look at it now, the plaintiff doesn't seem to be interested in that report, at all. (38)

Mr. Howell: Not at the present moment. We are interested in showing that we are an interurban railroad, therefore the Act is not applicable to us. If it is, then it is unconstitutional.

The Witness: Plaintiff's Exhibit No. 1 is a general map of the Utah-Idaho Central Railroad Company, together with its two branch lines.

The map indicates that the line starts at Ogden, Utah, and operates through a portion of Weber, Box Elder and Cache counties, over the Idaho state line into Preston, Franklin country, Idaho, a distance of approximately ninety-five miles.

It has two branch lines, one extending west and south
78 from Lewiston, Utah, to Quinny and Thain, a distance of approximately twelve miles, and another branch line in Weber County extending west from Harrisville through Plain City and Warren, a distance of approximately eight miles.

The map indicates the various cities and town through which this line passes, a brief description of its location in these cities being, the line starts in Ogden, Utah, in the middle of the block between Grant and Lincoln and Twenty-third and Twenty-fourth streets,—the block in which this building is situated, (39)—and extends along a public street known as Lincoln Avenue to the end of that street in Ogden City.

The next town is the town of Willard, and for the entire distance of the line in Willard it occupies a public street, a distance of approximately a mile.

It then runs north into Brigham City and for its entire distance in Brigham City occupies a public street which is four blocks from the main business street of the town and is on the street in the town of Brigham for approximately four miles.

The next small town is Honeyville. The line runs along one of the two only streets in Honeyville for a distance of about a block or a block and a half. It goes over what is known as the Collinston hill and enters Mendon, traverses a public street in

Mendon for the entire length of the city limits, and that street in Mendon is the business street of the town.

79 Goes on in a generally northern direction to Wellsville and enters Wellsville on a public street and makes a sharp right-angle turn on the public street and runs the entire length of the main business street at Wellsville.

The next town north, being Hyrum; operates on a city street of Hyrum for approximately a mile and a half, to the entire distance of the line in Hyrum.

The next town is Millville, upon which the line (40) occupies a public street from the two city limits.

The next town is Providence, where the same condition exists, the public street being occupied.

The next city is the city of Logan, upon which the line occupies the main business street and its residential extension on each side for the entire length of the city limits.

Logan is the fourth largest city in the state of Utah.

The next town is Smithfield. The line occupies the business street of Smithfield for its entire length through the town of approximately two miles.

The next town is Richmond. It occupies a public street for approximately a mile and three-quarters. That public street is about two blocks from the main business street.

The next town is Lewiston, the only town on the line of the road that it enters on private right-of-way, and only occupies a public street for a very short distance.

The next city,—and the last one,—is Preston, Idaho. The road enters the city on the public street and occupies the main business street of the city to its northern terminus, and the terminus of the railroad.

In all of the cities the line is subject to speed regulations generally ranging from twelve to fifteen miles an hour. (41) The Logan speed regulation is twelve miles an hour by ordinance.

In the city of Logan the entire length of our line through the city is on a paved street. As I said before, we occupy the main street, and are subject to the red and green stop and go traffic signals at each of the five blocks in the center of the business

district. We are subject to the same restrictions as automobile traffic.

80 At Smithfield the same condition obtains, only there are only three lights in Smithfield. At that point we are subject to the stop and go signals. And likewise in Smithfield the street is paved where we occupy it.

At Preston the street is also payed.

The Collinston divide is a divide through the mountains from the Salt Lake valley into Cache valley, South of the Collinston divide is the Salt Lake valley, where we are now. And north of the Collinston divide is the Cache valley, which extends a few (42) miles north of Preston, Idaho. That divide is through a spur of the Wasatch mountains. This railroad serves in general the north part of the Salt Lake valley and all the east side of Cache valley. It extends beyond the limits of the Utah state line, between six and seven miles. The only reason for extending beyond the state line is the fact that the Cache valley itself extends beyond the state line. The line was constructed to serve the Cache valley, irrespective of state lines.

Logan is the fourth city of the state. Ogden is the second. Later on, I have an exhibt showing the population of these cities. (43)

There is an exhibit later in the files that shows what percentage of our main line occupies public highways in the city streets.

All of our trains, both passenger and freight trains, move
81 upon these city streets and highways that I have referred to. We have no other lines. We operate, in addition to the railroad, an interurban bus line from Ogden to Preston, Idaho, through Sardine Canyon. Sardine Canyon is located on the map generally by a line straight up from Brigham to Wellsville. In fact, the white dotted line on the map shows the highway over Sardine Canyon. We operate our bus line paralleling our railroad as far as Brigham, through Sardine Canyon to Wellsville, and generally paralleling our railroad to Preston, Idaho.

In addition to that, in the city of Logan we operate a local city urban bus line for the handling of local residents and school supplies to and from the college. Both our railroad as far as Brigham and our bus line parallel substantially the main state

highway north and south, being highway 91. Then our bus line continues on highway 91, but our railroad runs approximately *straight* north and then does not connect up with that highway again until it reaches Wellsville. (44) It then substantially parallels highway 91 all the way into Preston.

In light line is shown the location of the Oregon Short Line Railroad. Their main line, paralleling us generally to the other side of the Collinston divide, and a branch line paralleling us from Cache Junction across the valley as far north as Preston. Cache Junction is shown on the map. It is directly north of Beaver Dam.

The Old Utah Northern—it might have been the Short Line, —but as I understand it, the original Utah Northern route, occupied the route which we now use over Collinston divide, but it was vacated on account of being not adaptable to steam line transportation. It has heavy grades and sharp
82 curvatures. The line ran straight northward through Preston, Idaho, as far as Pocatello. I don't know that that was the occasion for the building of the branch line from Cache Junction. I (45) imagine the northern part of the line is the old Utah Northern Railroad, which was narrow-gauge. I presume the old line in Cache Valley was connected up at Cache Junction with the new line as it proceeded north.

I have an exhibit later on which shows the spur tracks of the railroad. That will show their location on the line and whether or not they are located in cities or towns.

Exhibit 2 are copies of all the county and municipal franchises under which the Utah-Idaho Central operates, showing the various restrictions in those franchises as to the character and type of operation, both city and county. (46) The underscoring in these copies is our own underscoring, in order to emphasize certain restrictive features in the franchises.

The first one in the exhibit is the franchise from the city of Preston, Idaho. In that franchise we are restricted to the operation of the interurban railway only. We are restricted to the use of electricity, compressed air or liquified air as motive power, with the right to maintain poles for the overhead. In section 3 the property is again referred to as an interurban line of railway, and in the same section referred

or interurban electric railway receives more favorable terms, it shall be granted to this company. Section 7 is a straight prohibition against the use of any type of steam motive power.

Mr. Thomas: If the court please, may I submit that
83 this examination has gone far enough now to indicate that the line of inquiry which is being made here has no bearing at all upon the effect of the Labor Act upon this plaintiff, but has a bearing solely upon the character of the railroad as to whether or not it is an electric interurban, and therefore, it is solely an attempt to question and overrule the finding of the Commission.

I submit under the ruling which your Honor has made that you would not interfere with the finding of the Commission (47) except upon the evidence before the Commission, that this evidence should be excluded and all future line of questioning of this kind should be excluded.

The Court: You make the objection?

Mr. Thomas: I make the objection, if the court please.

The Court: The objection will be overruled.

Mr. Thomas: Exception.

The Court: I am not considering it from that standpoint at all.

Mr. Matheson: May the defendant join in that objection, your Honor?

The Court: Yes. I am letting counsel try the case as to the constitutionality of this Act as pleaded without respect to the finding of the Commission.

Mr. Thomas: May I add to my objection that this evidence and this line of evidence has no bearing upon the question of constitutionality, aside from the Commission's ruling, and therefore is irrelevant and immaterial.

The Court: I don't know whether it is or not. I never
84 pass upon that at the beginning of a lawsuit. I decide that later on. I will let counsel introduce and make the case,—whatever he claims has some bearing upon the case.

Mr. Thomas: May it be understood, to save time of the court, that all such evidence is subject to our objection, and the (48) same ruling?

The Court: Yes, if you think that does you any good in an equity case, why, sure,—and an exception.

The Witness: Plaintiff's Exhibit No. 2 shows all the ordinances, both county and city, granting franchises to the plaintiff over the streets and highways of the cities and counties to which they apply, giving the dates of the ordinances and their expiration showing the franchises still in effect. (50)

Plaintiff's Exhibit No. 3 is a historical sketch of the Utah Idaho Central Railroad and its predecessor corporations. The statements contained in said exhibit are those I would make if I were asked to state the history of the plaintiff company. (51) I do not think there is anything about the history of the company that I desire to add to what is stated in said Exhibit No. 3.

Plaintiff's Exhibit No. 4 is a description of the purpose and method of operation of the plaintiff company. If I were asked to describe the purpose and method of the operation of said railroad, my statement would be as set out in Exhibit No. 4. (52)

(It was thereupon agreed in open court by counsel for all parties that said Exhibits Nos. 3 and 4 shall be considered parts of the record the same as if Mr. Mulcahy had testified in open court to the statements therein contained.) (53)

85 The Witness: Plaintiff's Exhibits Nos. 5 to 14, inclusive, constitute a series of exhibits describing the various phases of the physical construction of the plaintiff's property and are designed to show that this interurban railroad is an entirely separate and distinct type of transportation facility distinct from a steam railroad or a bus line, or airplane, or truck line. These exhibits show a coordinated construction with all characteristics and all physical features carrying the same limitations of the interurban type of railroad operation, with the convenience of the interurban type of operation, and likewise the physical construction and the physical restrictions. All these exhibits are actual specific descriptions of the various phases of physical construction of the property.

Exhibit No. 5 is a physical description of the locomotive power of the railroad company. (64)

The facts concerning the subject treated in each exhibit are those which are true concerning the plaintiff's railroad. (65)

(It was thereupon agreed in open court that Exhibits Nos. 5 to 14, inclusive, may be considered as the testimony of the witness respecting the matters therein treated, without going into the contents of said exhibits in detail.) (66)

The Witness: Exhibit No. 5 is a description of the locomotives of the railroad and shows the factory rating of power, in practical language the ability to pull, of those locomotives over the various grades obtaining on the main line of the railroad. (66) The first two columns show the territory involved; the second and third columns the factory rating, and the third and fourth columns the practical rating. The exhibit generally indicates that plaintiff's motive power for the hauling of freight has a minimum practical rating of 275 tons, and a maximum practical rating of 650 tons over two small sections, with a general average rating of only 550 tons, or twelve
86 cars; and that limited by the lower restrictions on account of heavier grades. By "rating" I mean the tonnage that a locomotive will pull. The locomotives will only pull 550 tons, or twelve cars of freight, from the territory starting at Ogden as far north as Brigham City. This is very characteristic of interurban roads as compared with steam roads. (67) Therefore I say that plaintiff's motive power has a direct effect upon the operation of its line so far as its operation as an interurban is concerned. Small electric locomotives are characteristic of interurbans, and produce small trains and more rapid service, high frequency of service. I say that these conditions limit our trains to 12 cars because the average weight over a long period would indicate an approximate gross weight of 45 tons per car, and it is on the basis of that average that we arrive at a limitation of 12.2 cars in the first section of the railroad. Cars containing extremely heavy loads would decrease the average number of cars per train and extremely light loads would increase the number.

Plaintiff's Exhibit No. 6 is a list of the equipment owned by the plaintiff railroad, showing that with the exception of 98 steel gondola cars purchased essentially to haul beets locally (68) practically none of the equipment is interchangeable with other railroads, either because of the type of the equipment or its obsolescent character. This has a bearing upon the question of the interurban character of the plaintiff's line because it is essentially an interurban characteristic to have light, small equipment in freight equipment, and to have equipment not

designed to go out into the general nation-wide system of transportation.

Plaintiff's Exhibit No. 7 is a statement of the equipment and capacity of four sub-stations on plaintiff's line. It is directly related to Exhibit 5, since the size and tonnage capacity
87 of locomotives is directly related to the size and capacity of the sub-stations. Larger locomotives require larger sub-stations, the two units, the unit that furnishes power to the locomotive and the locomotive are coordinated to the 12 car load previously testified to. The sub-stations are coordinated to the locomotives. (69)

Plaintiff's railroad is operated by electric power purchased from the Utah Power and Light Company at a high voltage reduced and transformed through our own motor generating sets in our own sub-stations to 1500 volts D.C., upon which we operate the substation at Ogden. We have sub-stations at Ogden, Hot Springs, Dewey and Smithfield. The substation at Ogden carries a 500 ton load; the Hot Springs station carries a 550 ton load, and the Dewey and Smithfield stations carry a 1000 ton load. There are the same tonnage limits and the same limitation of trains in all the physical characteristics of the railroad.

Plaintiff's Exhibit No. 8 is a statement of the present copper overhead feeder and return circuit. It shows specifically that the size of the copper trolley, the size of the feeder and the capacity of the return circuit are of a size to accommodate the same load which the sub-station will furnish or the locomotive will pull, or, in other words, another step towards coordination and (70) limitation of the operation of the railroad to a small interurban type of railroad. In the exhibit are calculations showing that with a 550 ton northbound train on the Brigham grade and another train at the Hyrum grade, the approximate volts lost between these points and the sub-station is 500 volts. The effective voltage is approximately 1000. This we consider a practical load limit for the present system of conductors. Actual train loads tested in the past have confirmed these calculations quite closely.

The joint resistance of the entire circuit consisting of
88 4/0 copper trolley wire, 7/16" steel catenary cable, 767,000 CM aluminum feeder, 70# steel rail and 4/0 copper bonds is .122 ohms per mile.

The Brigham grade is located 18 miles north of the Ogden sub-station and 17 miles from the Dewey sub-station. A train of 550 tons northbound makes a total power demand of approximately 660 K.W. Reduced to amperes this is $\frac{660,000}{1500}$ or 440 amperes. Amperes or Kilowatts supplied by the respective stations with no other load between Ogden and Dewey is inversely proportioned to the distance the load is from the sub-stations. In this case Dewey will supply 214 amperes times 1500 volts or 320.5 K.W. Ogden portion of this load is (71) 226 amperes times 1500 volts or 339.5 K.W. The volts drop is amperes times miles times ohms per mile or 226 times 18 times .122 which is 470 volts loss from the sub-stations to the locomotive. The effective volts at the locomotive being 1500 minus the volt drop or 1030 volts applied to the locomotive, would impose on that line a heavier train or a heavier locomotive, would increase your volt loss and bring your thousand ton to an impractical figure, or as the example is carried on,—

An attempt to move an eleven hundred ton train up this grade would result in approximately a total power demand of 1320 K.W. Power demand raises in proportion, if the speed is not changed. Amperes would be twice 440, or 880. Portion of current and power furnished would be twice the amount shown for 550 ton train or Dewey 428 amperes or 641 K.W. and Ogden 552 amperes or 679 K.W. Volts drop from the sub-station to the locomotive would be 470 times 2, or 940. The effective volts would be ordinarily 1500 less the 940 or only 560 applied to the motor which would not move the load."

Or, in other words, that is an illustration that the
89 electrical feeder and return circuit are again coordinated with the limiting factor of the locomotive and of the sub-station. (72)

On the Brigham hill we can pull a 12-car train weighing 550 tons, one car up and over that hill, but that is the limit of our capacity. If we wanted to follow that up and get two cars on that grade, they would both stall and you couldn't get either one of them over. If we endeavored to impose twice that load on that hill, every part of our physical construction would be double overloaded. It would paralyze our system.

The whole theory of interurban construction is a transportation unit of limited capacity but capable of frequent service as contradistinguished from a steam railroad where the entire

method of operation points to a high tonnage efficiency, long trains, and high ton miles per locomotive mile. There are two characteristics of the two types of transportation unit. On a level grade a number of cars might be moving that weighed 550 tons; if we are pulling over these hills they cannot be on the hill at the same time. They can only be followed up by a later car of the same weight after the other one had gotten over, and proceed to use up the electric power. (73) If we wanted to operate for the carriage of increased tonnage it would be by additional trains rather than by increasing the length of the trains. The more business, the more trains we run, rather than being able to run big, long trains, like the steam roads do. We have to run additional trains and run them more frequently. This ties into the practical method of operating an interurban, in that if we had 5 cars of potatoes offered to us for
90 movement we have a little locomotive that takes the five cars and moves them right now. The established method of steam operation is that they must of necessity wait for the best loading. Where we will move sugar beets or raw milk, commodities of that type, in trains consisting of one or two cars, frequent service and fast service, it is impossible for a steam railroad operation, with its type of construction and its large rating and its necessity for long trains in order to get efficient operation to perform that service.

That is getting directly to the difference between the interurban type of transportation unit and the steam type of transportation unit. As I said before, they are just as different as trying to compare a highway truck line and a steam railroad, or compare a highway truck line and an interurban railroad. They are three different types of transportation units physically different. (74)

Our electric interurban is just as much different from the Union Pacific steam *railroad* as the truck line that runs along our main highway is different from our line.

Exhibit No. 9 is a short exhibit, showing the weight of rails of which this railroad is constructed. It shows a total mileage, including the main line, sidings and spurs, of one hundred and fifty-two miles.

There are only two miles of 85 pound rail, one mile and a half of 75 pounds, 82 miles of 70 pounds, 15 miles of 65, 3 miles of 60, and 46 miles of 45-48 pounds, and a mile and a half of 40 pounds. That showing a track construction of very light

rail, capable only of accommodating small trains, light locomotives and light loads.

91 Of our entire railroad only 11 miles is tie-plated, and that is in areas where there is heavy curvature. That condition is only possible where you have short locomotives, short trains and light trains, without a heavy imposition of stress or sharp side thrust.

Steam railroads use as high as 110 pounds on their main line. I do not believe there is any main line rail in this intermountain area less than 90 pounds. The great bulk of it is from 100 to 110. (75)

We have one branch line 12 miles long from Lewiston west and south to the Quinny sugar factory, also one branch line from Harrisville west through Plain City to Warren, that are built of 45 pound rail. And generally all of our passing tracks and sidings are built of 45 pound rail. On these hills on the main line, 12 miles of the main line railroad between here and Brigham is 65 pounds and north of Brigham and south of this end is 70 pounds. The only rail we have heavier than 70 pounds is a small section of two miles in the pavement in Smithfield City; that is 85 pounds. That weight was used to hold the pavement struction rather than any necessity of the load imposed on the rail.

Tie plating is a square piece of metal fitting under the rail, between the rail and the tie, in order to form a wider base for the rail to sit on the tie and relieve the stress. The tie plating is attached to the tie and the rail both. (76)

All steam line main lines, practically all the branches, are tie plated. That is necessary on account of the heavy steam power and the longer train.

92 Our ties are 6-8-8 ties, with two-foot spacings, 2640 to the mile. The steam road construction is never less than seven by nine, and generally, in later years, they are using a ten-inch tie. They never use less than nine, where we use an eight—and generally a ten-inch. They use a seven-foot length where we use a six-foot length. That additional material under the rail is required where you are imposing heavier loads on the rail.

The same thing is shown by Exhibit 9 as is shown by the previous exhibits I have mentioned, as limiting the character, along

with the other limitations, of the trains which my line can take care of.

Exhibit No. 10 is a detailed statement of the location of the passing and spur tracks of the railroad, together with their car capacity. It shows that the longest passing track of the railroad is 32 cars long, or has (77) a capacity to accommodate 32 cars, with the average length of our passing tracks sixteen cars. You have developed throughout all of these exhibts a limitation on the size of train by power, size of rail, size of locomotive, size of electrical conductors, and now you have the picture with the passing and side tracks where one train may go by the other, the same limitation in length, with an average length of sixteen cars per track. The length of a steam railroad passing track is usually 75 to 150. That will be brought up just a little later.

Exhibit No. 11 shows another characteristic of interurban operation. It shows out of the total mileage of this railroad 20.64 or 18 per cent of the track lies on public streets or public roads and that 20 per cent is specifically occupied by franchise authority carrying the interurban electric limitations indicated in Exhibit 2. (78)

Exhibt No. 12 are photostatic copies of the station plats
93 on the railroad, showing the degree of curvature from the main line into the yard facilities and the house track facilities of the railroad.

The locomotives on our railroad are only 35 feet long with a 16 foot distance from truck center to truck center. They are particularly designed to accommodate themselves to sharp curvatures.

These station plats show—for instance, the top plat, at Ogden City, shows the turn-out into the terminal yards as a 350 foot radius curve, and two 200 or No. 4 frogs with sharp radius *curva*—can not even be operated by a switch engine of a steam railroad. It is possible for a small switch engine to carefully get around 150 foot radius if it is well guarded and the movement is very slow, which is another physical characteristic of an interurban railroad, sharp curvature right off of the business streets into business property. You could not put any type of a modern steam locomotice around there, except a very small switch engine under a very cautious movement. It would be

impossible to put a passenger car on there at all, one of these common, standard, passenger cars. (79)

Our passenger cars are, I think, 66 feet. As to how long an ordinary passenger car of a steam railroad is, the main difference is their six trucks—the car is some longer, but the main barrier is six trucks on both sides.

No. 4 frog is the angle of the frog. The smallest frog used on steam lines is No. 7, which has roughly about 350 or 60 radius curve, or may accommodate that. The No. 4 is down to about 160 or 70. Those are rough figures, but very close.

94 The third graph or photostat in this exhibit shows our lead into the American Can Company, which is operated for it on a sixty degree or one hundred foot radius curve. I do not know of any type of steam road equipment that can operate on a curve that sharp.

Throughout this exhibit are many curves, some as low as 100, all No. 4 frogs, which means about 160 or 70, and our maximum, or our flattest curvature into our yard facilities is approximately 260 or 300, and very few of those. On a 100 foot radius curve we have to operate it singly. We can not operate two standard freight cars coupled together unless they are small cars. (80) If you have these large automobile cars or excessively high cars it has to be operated singly.

The American Can spur leads off of Lincoln Avenue into the American Can, about three blocks north of this building, within Ogden City limits.

These graphs show the entrance to our various yards and industrial sidings. Our main line will accommodate as far as curvature is concerned any type of standard freight car. We do not have a switch going out from our main line to the Logan Sugar Factory. We deliver there through interchange; that factory, however, has not operated for some years. We deliver from the interchange at Ogden. We have direct delivery into the Franklin County Sugar Factory at Preston, Idaho, and we deliver from interchange with the Short Line at Lewiston Amalgamated factory, likewise through the interchange at the Brigham Sugar Factory. (81)

Interchange tracks are generally jointly maintained. Each carrier owns part of the track and they maintain their own part.

We have many spur tracks leading to industries, to coal
95 yards, to fruit packing houses, canning plants, warehouses, gasoline stations. We get into the brick plant at Harrisville.

These exhibits show spurs into the canning plants. I think possibly a typical operation with reference to one of the processing plants is shown on the fifth sheet from the last in (82) Exhibit 12 and shows our trackage to the Richmond milk spur. We have on that track a curve to our high line coal spur with a 199-foot radius; another curve sixteen degrees or 359-foot radius. We operate into that Richmond milk plant raw milk that is assembled by the farmer at the Hyrum assembling station, you might say, or at the Preston station, right at this particular time of movement, or from Hyrum to the Richmond milk factory, the fluid milk moving by rail in one-car trains—that is, a passenger motor hauling one car for fast service on account of it being a highly perishable commodity, into the milk plant to be put through the condenser and come out as canned milk. That is a very typical interurban operation, because it requires a one-car train and a high speed movement, and it is quite characteristic of the interurban type of operation.

It is 21 miles from Hyrum to Richmond and on that particular train we do not pick up anything. That is a special service we render; at times of the year that same type of service obtains from Preston down to the Richmond milk plant, (83) 14 miles without any pick-up between, unless there were an emergency where there would be an expedited car at one of those stations to move to the other one. In such case we would pick up. I would say 99 per cent of the time there is nothing moving in the train except the milk.

The spur mentioned is to the Richmond factory of the
96 Sego Milk Products Company; it is a nationally known condensing plant, a subsidiary of the Pet Milk Company. We also take coal into the plant and less-carload shipments and carload shipments of condensed milk out. We take raw products collected from the farms in and the finished processed product out; also take in the materials necessary to process the product. (84) If somebody in Detroit, Mich., has ordered a car of this milk it would be loaded into some of these railroad trains and we would take it to Ogden and deliver it there to the Union Pacific or the Denver & Rio Grande, according to the shipper's routing, making that exchange in Ogden. If it were

going to the northwest we would exchange at Hyrum to the Oregon Short Line. Materials coming in would be similarly interchanged.

Plaintiff's railroad is not in any sense a bridge carrier; we have no bridge carrier rates. All our business is either originated by us or business destined to points in our territory. We do not bridge as between any transcontinental carriers, (85) that is, we are not intermediate on any hauls. A bridge route would be a carload moved from Portland going to Denver, they would give it to us at some place in Cache Valley, we would return it to the steam line at Ogden. We do not and never have done any of that type of business. We have served our own local territory exclusively.

Exhibit No. 13 is a detailed statement showing the elevations, locations, percent of grade and the length of grade. It shows approximately 75 or 80 grade breaks, or points where the percentage of grade on the uphill or the downhill changes. That in itself is another physical interurban characteristic. (86) Grade breaks [illegible] a very slight extent going up a hill on one
87 grade and change to another percentage before we get to the top. More particularly, rather than spending a lot of money in the original construction in leveling the grade out, we have very many places where we come along and will go up a grade for two or three blocks, then down the other side. We climb over just a little knoll. It is possible because our type of operation does not contemplate long, heavy trains, but rather small trains that run up and down these little knolls. The exhibit shows the maximum grade of our railroad to be 4.77; it is not economically sound, but, unfortunately, it is in the middle of the main business street of Logan City. By ordinance we are forced to conform to the street grade. If we were built on private right-of-way we would not leave it there. The other grade breaks, from 2 percent, 1½ per cent, slightly over 2, on this type of railroad are economically sound, I would say. (87) On streets and highways we cannot change the grade. On private right-of-way, if the break is not too severe it doesn't pay to change them. I would say roughly not more than 15 or 18 per cent of our grade breaks are on public streets and highway, though the heaviest ones are. 20.64 miles of plaintiff's road are on public streets or highways, the balance of the right-of-way is privately owned. The total main *lime* distance is 95 miles; the total branch line distance is 18 miles. (88)

Exhibt No. 14 is a profile map of plaintiff's road showing in 10-mile areas, and producing on that profile the factory rating of the railroad, power, and the practical rating. (89) It shows how we practically operate our railroad with its various physical limitations. The first sheet of Exhibit 14 shows the first 10 miles out of Ogden, with 13 grade breaks in that
98 10 miles. The practical operation permits us to haul 12 cars northbound over that area and 14 cars southbound. The second sheet shows the next 10 miles. It takes all the power we can command and all the strength of the type of locomotive we have to operate a 12-car train on that particular portion of the road. Should the cars be lighter than the average weight of 45 tons, or if they are empties, we might handle trains of 14 or 15 or 16 cars. We have to space all our trains within reasonable limits (90) so they are not pulling on a particular sector or hump at the same time. Our steepest grade is over Collinston hill as we go north from Dewey to the summit, and south-bound the heavy grade is from slightly south of Mendon to the summit. On the northbound movement we have a maximum of two percent with a minimum of 1-8-1 adverse grade, with a practical limitation of only 8 cars per train or 350 tons, for a little over 8 miles going north. The other side, coming south, is 6 miles, and has the same general limitations of about 8 cars. (91) The grade is a little heavier coming south but it is a little shorter. We are limited to about 8 cars per train for a distance of about 14 miles. This controls our entire operation and is reflected in our operating averages. When we leave Ogden with 12 cars, unless we can find enough local destination loads this side of the hill we have to double the hill; we stop at Dewey and take half up and go back and get the other half and take it up. The same thing is true with regard to trains coming south. (92)

(Upon application of plaintiff's counsel, for the purpose
99 of avoiding confusion, the Court authorized the erasure from certain exhibits introduced in evidence in this case the words "Before the Interstate Commerce Commission, Re Railway Labor Act, Docket #12, Exhibit No. ....." ) (93)

Witness Mulcahy resuming: None of the capital stock or securities of the Utah Idaho Central Railroad Company is owned by any steam railroad or any railroad nor by any of the officers or agents of any other railroad. No officer or agent of any other railroad has any say in the manner in which the plaintiff company shall be operated. The plaintiff is an entirely

dependent carrier operated by its own board of directors lected by its own stockholders, which board elects the operat- g officers who operate independently of any other railroad or her influence. Plaintiff has not received any advances or any oney from any railroad company, its officers or agents. (96) our manner of operations we do not give any preference to y railroad at all with whom we may interchange. There is e common carrier truck operator and several contract rrier truck operators in the territory we serve. There is no mmon carrier truck operator north of Brigham City. (97) here is no question but that the development of truck trans- rtation has been much less in the area served by our railroad an in sections of the state served by steam railroad only. at is due, of course, to the character of our service. There s been no substantial change in the construction of our line ce it was originally built or in the method of its operation. e construction of the present line started in 1914 and was cluded the latter part of 1915. That construction work s the joining together of two small street car and interurban lines in Ogden and in Logan. We do not sell any inter- line tickets with any steam railroad and we never have. (98) We sell interline tickets with the electric inter- ban south of us, the Bamberger Electric, and we sell inter- e passenger mileage which is honored on both of the two her interurbans in Utah, namely, the Bamberger Electric d the Salt Lake & Utah Electric. There have been several stances when the bus line I have spoken of is unable to erate in the winter time, because of snow conditions in rdine Canyon. There were maybe three or four such inter- ptions during the last winter, in which cases we substituted e schedule of the bus operation with an interurban passenger ain. We carry light baggage and express on our line and cases of interruption, above referred to, we just transfer ese commodities to a train instead of a bus. We have a mail ate (99) on our interurban passenger trains for restricted rvice, of first-class mail. Our busses carry no mail. United ates pays us under the law and a government schedule cov- ing the mail pay for electric railroads. Our railroad was ssified under the decision as an electric railroad and we are ing paid by the Post Office Department at the schedule set t in the Electric Railway Mail Pay Case of the Interstate mmerce Commission. (100)

(Plaintiff's counsel offers in evidence by reference decisions of the Interstate Commerce Commission in the Electric Railway Mail Pay Cases, 58 I. C. C. 455, 98 I. C. C. 737, of which cases the Court announced it would take judicial notice.)

The Witness: That concludes my testimony relative to Exhibit No. 14. Said series (Exhibits Nos. 5 to 14) are intended to show definitely a limitation of operation due to physical construction peculiar to a transportation unit of our character.

The next series, beginning with Exhibit No. 15, is de-
101 signed to show the practical effect over a period of years of the limitation of operation above referred to. (101) Exhibit No. 15 shows from the years 1932 to 1935, inclusive, by months, the number of passenger trains, passenger busses and freight trains operated over the railroad, and further shows the daily average number. In a summary it shows that during the year 1932 there was an average of 9.7 passenger trains per day, 4.1 passenger busses, and 6.6 freight trains. In the year 1933 the average number of passenger trains was 11, passenger busses 5.6, and freight trains, 9.1. In 1934 the average was 11.5 passenger trains, 4.1 busses and 7.7 freight trains. The year 1935, the average was 9.6 passenger trains, 4.2 passenger busses and 7.8 freight trains. In other words, the limitation of the size of our trains, which is a peculiar characteristic, requires the operation of frequent service or a substantial number of trips per day. That brings in the service advantages of (102) interurban lines in territories adapted for their operation. The exhibit does not show our daily schedule. We can introduce our present daily time cards as to passenger operations. Our freight trains operate daily, but not on time card schedule, and are classified as extra trains, and no time card is published for them. As to freight service our schedule at present is for the same number of trains daily that it has been all the time. The number is reasonably close to the general daily average for a long period of years. There is a substantial decrease in the number of passenger trains due to new highways and increased use of automobiles. We operate a daily merchandise train for the handling of less carload packages in connection with our electric interurban. (103) We furnish store-
door delivery service for less carload shipments and have
102 done so for several years,—what is commonly known as pick-up and delivery. This train is operated so the shipper in Salt Lake or Ogden can have the truck of the rail-

road call at his warehouse any time up to the close of business today and have his merchandise delivered to consignee at any place along our territory at the opening of business tomorrow morning, with a like reverse service, every working day of the year. Our daily merchandise train is powered by an interurban passenger car with the windows removed and boarded up and the passenger-carrying space of it used for the handling of package freight. On our merchandise trains just described we have constructed our own ice refrigerator box for the handling of perishable shipments in the summer time. The car is heated in the winter for the handling of shipments affected by the extreme cold. (104)

The general character of our pick-up stuff is vegetables, small packages of drugs, or anything we might ship from the wholesaler to the consignee, processed meats, food stuffs and general merchandise commodites that might move from the wholesalers in Salt Lake and Ogden to consignees in Cache Valley. The reverse movement out of Cache Valley into the markets at Salt Lake and Ogden consist largely of agricultural supplies that are being shipped from farm or processing plants, berries and eggs, poultry, sugar, potatoes, vegetables, melons, slaughtered veal. The large milk production moves to processing plants in Cache Valley. We handle substantial quantities of that through a special milk train operated in Cache Valley, the procedure being that the farmer brings his milk in a can to the central assembling plants at Hyrum or Preston. Our train operates from these (105) assembling plants to the condenser at Richmond.

Exhibit No. 16 is a list of passenger stations on the line
103 between Ogden and its terminal, showing distances and whether or not each is a station agency, the population of the cities and towns where stops are made. Where population is not shown, it is a country road stop. In 107 miles of main line and the Plain City branch upon which we operate passenger service, we have 73 passenger stops, or approximately a stop every mile and a half, the method of operation being that the prospective passenger walks down the country road to the railroad and flags the train, which stops and takes him on. (106) He has to go to one of these stopping places. These stops take in practically every cross road. In a good many stopping places we build a shelter against wind and rain. In practically each city we have an agency station. We operate along the middle

of the street and stop in the middle of the street in front of the station, passengers crossing from the sidewalk across the current of traffic to our train to board it. With the exception of this Ogden station right back of this building we have no other city stops that are not in the middle of the street. We have two other train stops in Ogden going north, these stops being at all the cross streets there are in the city north of the station. (107)

In our bus operation we will stop any place along the highway for the convenience of passengers that is a proper traffic stop. Our passenger operation is an extension of street car service into the country. The only reason stops are wider spaced, as compared with street car operation, is because the density of population is not there. In interurban service we stop at practically each cross road because they are the concentrating points of that area of population. (108)

Our freight operation has almost, but not quite, as many sidings and spurs as we have passenger stops. We average one every three or four miles, which are available for the farmer to load his product for the market or processing plant. The
104 farmer does not bring his stuff over and wait for the train to come along and have the train crew load it. The bulk of agricultural production moves in carload shipments. We have just completed a potato and beet season. We spot appropriate cars at each one of these sidings for the farmer to bring in his potatoes and ship them out in carload lots. Beet dumps are located at strategic points where the farmer delivers his beets and they are loaded in cars and carried away. Farmers' small stuff that is to move in the merchandise train is concentrated in the various agency stations. Except in one or two non-productive areas, we have such an agency station, roughly about every six or seven miles. The farmers' small volumes are concentrated at those stations and loaded there. (109)

In Logan we have a cooling room built into our freight house; in Brigham a refrigerator department. These permit the farmer to bring in perishable commodites in advance of train time, bill them and leave them in this cooling room, from which they are loaded by our employees on to the train. I would say this is a service not ordinarily rendered by steam railroads. We have 16 agency or passenger stations on the line. The rest are non-agency stations. It is not common in steam railroad opera-

a steam railroad train to stop in the center of the street and have the passenger board the train there. (110)

Our occupation of city streets and highways is peculiar to and a characteristic of interurban operation. The purpose is to bring the transportation along the street where the population and the necessity exists, and all interurbans generally are built with that view in mind—stations located along the business street, somewhere in the center of the business section of town.

All our freight and passenger stations are located in the
105 same building, with the exception of two and there the intervening distance is only a few hundred feet. They are located on the main business streets.

At Logan it is quite common to unload merchandise freight from the street and truck it across to our station. (111)

Exhibit No. 17 shows for the five-year period 1931 to 1935 the number of passengers handled, the amount of passenger revenue, and the average fare per passenger on the lines of the Utah Idaho Central Railroad. It shows that in 1931 we handled 489,000 passengers for an average fare of 18.3 cents. In 1932, 407,000 passengers at an average fare of 16.5 cents. In 1933, 366,000 passengers for an average fare of 16.8 cents. In 1934, 408,000 passengers for an average fare of 15 cents. And in 1935 400,000 passengers at an average fare of 16.1 cents. This exhibit demonstrates the fact that an interurban operation, or rather, our operation, is merely one small step ahead of a street car operation. It shows that the average ride of our passengers on our railroad is only a distance of approximately 5 or 6 miles. In other words, they are using these closely-spaced passenger stops in order to avail themselves of frequent (112) service and to move them into the next neighboring community, or from one cross road to the other. The average fare on a street car line is usually from 5½ to 7 cents. Ours is just a little over twice that much. In other words, it is a street car line grown up a little bit. I think the average street car fare over the United States is about eight and a fraction cents.

Exhibit No. 18 classifies the passengers handled on our
106 railroad for the five-year period between so-called regular passengers and school students. A distinct function of our property is the transportation of school children from their residences to central educational institutions. For example, in Cache Valley they only have two county high schools.

and all the students of high school age are taken at the expense of the school board from their homes to those central educational points. We operate what is known as special school train service for the transportation of those students at an extremely low rate of fare.

This exhibit indicates that in 1935 out of a total (113) of 400,000 passengers, 189,000, or slightly less than half, were school students operating on these interurban school trains. In the previous year this school student load was 175,000; in 1933, 174,000; 1932, 185,000, and in 1931, 210,000. In each instance the percentage of school students is between 40 and 50 per cent of the total.

In the regular passenger totals are included full fare passengers, mileage passengers and commutation passengers, our heaviest commutation movement being in Cache Valley, where the residents of the county and the smaller surrounding towns obtain employment in Logan, and we move them from their homes to their places of employment in the morning and back at night, and issue a commutation fare book for that.

Our operation for the school children is a distinct interurban operation. The schools served are located at Hyrum and Richmond, the structures being respectively about 300 and 600 feet from our track. (114) The average fare for the children would be about 6 or 7 cents each way. Both high schools were constructed since our line was built and the location of
107 our line and its facility for handling students had a distinct bearing upon the location of the schools.

Many processing plants have been erected with reference to our line.

The series of exhibits just discussed are designed to show the limiting characteristics of interurban construction and the effect upon our operation.

I now have a series of exhibits showing statistical information with reference to the steam line railroads (115) operating in this same general territory, or rather, in intermountain territory. I have included in this series of steam line exhibits every steam line operating in Utah of which the information was readily available. These exhibits will contrast the steam line construction and operation as compared with ours.

Exhibit No. 19 shows the list of sidings for a distance of 200 miles from Ogden on the Los Angeles & Salt Lake Railroad, the Southern Pacific Railroad, the Oregon Short Line Railroad, the Union Pacific Railroad, and the Denver & Rio Grande Railroad. It will be recalled that an exhibit of this character introduced for the Utah Idaho Central showed the average length of sidings for the accommodation of trains of 16 cars. Exhibit No. 19 shows for the Los Angeles Railroad that the average length of all of their sidings in this 200 mile area is 87 cars, or between 5 and 6 times the length of ours. For the Southern Pacific the average length is 114 cars, or between 7 and 8 times the length of ours. For the Oregon Short Line the average length is 66 cars, or between 5 and 6 times the length of ours. For the Union Pacific the average length is 109 cars (116), or about 7 times the length of ours. For the Denver & Rio Grande the average length is 86 cars, or between 5 and 6 times the length of ours.

The increased length of cars on steam road tracks is to
108 accommodate long steam road trains. For the same reason, the restricted length of ours is to accommodate short interuban trains. I might add, in connection with this exhibit, it is generally true of all roads, but I have just counted the number of sidings on the first 200 miles of the Los Angeles Railroad and there are 35. On the 95 miles of our main line we have practically double that number, in half the mileage.

The comparison of passenger stops would be much more out of line. Our passenger stops average about every mile and a half; on the average steam railroad they will not average one in 20 miles. In this western country we have distances as high as 40 or 50 miles between steam railroad passenger stops. (117).

Exhibits Nos. 20 and 21 are designed to show actual comparison in operating results and operating costs between a steam railroad and an electric interurban railroad. The exhibits bring out clearly such a wide difference in operating results as to indicate that the same type of regulation, labor or otherwise, is not appropriate or applicable, one type of transportation unit to the other.

Exhibit No. 20 shows for the Union Pacific, Oregon Short Line, Los Angeles & Salt Lake, Southern Pacific Company, Denver & Rio Grande and our own railroad the number of

freight train miles—freight car miles, and the amount of wages for enginemen and *trainmen*. In each of these cases it is produced down to the actual length of the average freight train on these various railroads, and the actual cost in cents of *enginemen* and *trainmen* service for handling those trains. The average length of train and cost of enginemen and trainmen above referred to are over the entire railroad obtained from their official figures filed with he Public Utilities Commis-
109 sion of Utah. (118) Each of the constituent units of the Union Pacific System are taken separately, both branches and main line.

For the year 1935 the average length of a freight train on the Union Pacific was 60 cars; the average cost for trainmen's service was .65 of a cent per car mile. The average cost for labor service for each car mile moved. On the Oregon Short Line, their average train length was 48 cars; their cost, 1.01 cents per mile. For the Los Angeles & Salt Lake the average train length was 48.3 cars; average cost, 1.21 cents. For the Southern Pacific average train length was 56.6 cars; average cost, 1.08 cents. For the Denver & Rio Grande, average train length was 42.4 cars; average cost was 1.28 cents. For the Utah Idaho Central, the average freight car length was only six and a half cars; average cost, two and a half cents per car mile. (119) As compared with the first of the exhibit, the Union Pacific, our train length was approximately one-tenth of theirs, and our labor cost for transporting each car one mile was just about four times greater than theirs. That clearly demonstrates the absolute difference in labor conditions, type of labor, type of operation. Were you to attempt to impose on an interurban railroad the same type of labor regulations that you impose on a steam railroad, with its consequent full crew requirements, etc., you would create a labor cost on an interurban railroad that would be prohibitory to operate under. That would be true of our road. With our different type of labor crew, still our labor cost per car mile is four times that of the Union Pacific.

We require on our one and two car passenger operation
110 a motorman and conductor. The steam railroad passenger operation will run (120) from 10 to 15 cars. They require an engineer, fireman, conductor, flagman and a brakeman, or five men. On our one-car operation, if we were required to accept that type of employee personnel, it would

almost take up the passenger room, and nothing for them to do. On our railroad a one-car passenger train has two men on it. We have no block signals and no operation with less than two men. On our maximum freight trains we have four men, motorman, conductor, brakeman and trolley man. In many of our freight operations, where the unit consists of a power unit and one car, we operate with two men. On some of our little larger local operations we operate with three men, motorman, conductor and brakeman, the motorman or the brakeman then being trolley man also. (121) My recollection is that the minimum requirement on a large steam railroad is six men for freight trains. Nevada has a law that a steam railroad may not carry more than 75 cars in one train. I do not believe they have a full crew law. The Brotherhood *agreements* with these steam railroad carriers, however, generally carry a clause as to the minimum number of men permitted. (122) A full crew of a passenger train is an engineer, fireman, conductor and two brakemen. On a freight train my understanding is that the minimum is six men. A six-man crew would be the conductor and three brakemen and the two men of the engine crew.

I have just compared for the year 1935, and the preceding years generally paint the same picture on the freight operation of these railroads.

Now, as far as passenger operation is concerned, for the year 1935, the average length of their passenger trains was
10.7 cars, with an average cost of 2.86 cents per car mile.
111 The Oregon Short Line, 8.6 cars, average cost, 3.75 cents per car mile. The Los Angeles & Salt Lake Railroad, average length 10.7, average cost of 3.22 cents per car mile. The Southern Pacific, average length of 10.3, average cost, 3.32 cents per car mile. The Rio Grande, average length of 7.2, (123) average cost, 3.89 cents per car mile. On the Utah Idaho Central the average length is 1.1 cars, and our cost for trainmen's service, 4.9 cents per car mile. To compare that with the Union Pacific Railroad, our trains are .1 long, and our labor cost per car mile is almost double.

There is a type of electric railroad that is common and similar to the steam railroads; that is a type of road that is no doubt referred to in the law as a steam railroad operated by another type of power.

With that thought in mind I have an exhibit, No. 21, a comparison between the steam operation and the electric operation of the Chicago, Milwaukee & St. Paul, which is a western road, a substantial portion of which has been electrified and turned into an electric railroad of a character to conduct a general steam railroad business. The practical result of that type of electrification is shown in Exhibit 21, where on the Chicago & Milwaukee for the year 1929, the first year of the exhibit, the average length of the trains on their steam operation is 45.8 cars and on their electric operation 72.6. Their labor cost on their steam operation is 1.16 cents, and on their electric operation, 1.01 cents. In other words, there can be an electric railway that is identical and from these figures practically more efficient than a steam operation. (124) In the Milwaukee operation they were operating longer trains
112 for a less cost than on their steam operation. That is a type of electric railroad absolutely separate and distinct from the interurban type, which the Utah Idaho Central is.

The Chicago & Milwaukee line is operated east and west of Montana for a distance of four or five hundred miles, and into and through Montana. They have a very large electric engine; some of them with self-generating features; the size of their engines compared with our electric engines would be about ten to one. They have very heavy transmission supply lines. My impression is that the voltage on the Milwaukee is 22 or 2300. Whether the voltage is 1500 or 750 or 2300 is not particularly a limiting factor. It depends upon the amount you can furnish and you can consume (125), and the type of conductor as to the resistance set up and the line losses and other losses.

The Milwaukee has a panagraph system instead of using a trolley pole; it is a cage-looking affair almost as wide as the locomotive and is raised and lowered through mechanical pressure. There is an overhead wire which, instead of being confined during operation to the limits of the wheel, has this big wide panagraph shoe which permits of the movement back and forth across that shoe. The Milwaukee is able to pull larger trains with their electric operation than their steam operation. They have a higher average, gets more power out of the electric engine. (126) The Milwaukee changed from steam to electricity. Except changes required in the installation of electric operation, the Milwaukee still maintains the same number of employees.

The statute specifically refers to a steam railroad which
113 operates with another type of power—any other type of power.

I believe the Pennsylvania is now electrifying its line into Washington. There are quite a few of such roads in the vicinity of New York. I guess there are many cases throughout the country.

The law (the Labor Act) was originally passed in 1926 with the same type of exclusion clause, and at that time the (127) Milwaukee had been converted to electrical operation and I think conversion work had been done on some of the eastern lines. (128)

I contrasted the freight operation between the Milwaukee steam railroad and the Milwaukee electrified railroad. The passenger comparison is the same characteristic.

The average length of a passenger train on their steam operation was six cars with a cost per car mile of 4.82 cents. And on their electric operation the average length was 10.1 cars, with a cost of 3.08 cents per car mile, showing the same effect of electrifying a steam railroad. (130) The electrified portion of the Milwaukee handles longer trains at a less cost per car mile than the steam portion.

In the next four exhibits, graphs, I bring out very distinctly the comparison of the operation of the electrified portion of the Milwaukee with our line. Exhibits 22, 23, 24 and 25 are graphs setting out the actual operating results compared with steam railroads, electrified steam railroads and the Utah Idaho Central.

The first graph shows the average train length over the years covered by the exhibit. The longest average train length on the graph is the electrified Milwaukee. The very small
114 column on the extreme right of each year is the Utah Idaho Central train length as compared with the average train lengths of all of these other carriers shown in the various colors. That pictures more clearly than any other evidence we have offered as to the absolute difference in the type of operation, the absolute difference in the labor requirements, the difference in the skill and knowledge required of train employees on an interurban railroad as compared with a steam railroad. The very difference in the requirements and in the method of

operation obviously indicates that a different type (131) of contract negotiations is necessary.

The second exhibit, No. 23, shows the same information graphed for passenger operation, with the highest column being electrified steam operation, the other large columns the other steam operations in the territory surrounding this carrier, and the very small column on the right the size of the Utah Idaho Central trains.

Exhibit No. 24 is the graphing of the cost of train men. This is just the reverse, in that the very large column, or the high cost, is the cost per car mile on the Utah Idaho Central, and the smaller columns are the cost per car mile on the steam railroads.

Exhibit No. 25 is the graphed comparison of the cost on passenger service, with the larger columns the labor cost per car mile on passenger service—or with the larger cost the cost on the Utah Idaho Central, and the smaller columns the cost on the steam roads.

Our rates per hour are lower than the rates on the steam railroad. The number of men on our crews is smaller; the rates are lower and the crews are smaller by reason of the lack of experience and ability on our operation as compared
115 with the steam road operation. And then one very substantial factor that enters into the costs is the (132) many, and to my mind extreme, penalties for different types of work and different character of service required in the labor contracts of the steam railroads as compared with ours.

The labor contracts on interurban railroads are essentially based on the principle that a man is paid for the amount of hours he works according to his ability to perform the job assigned to him, while on steam railroads the labor contracts have very many technical and unusual conditions as conditions whereby a man might at the same time be paid for two different services although he just uses one unit of time in order to perform the two. By reason of the penalties in the contract he can be drawing, for example, road pay and switching pay during the same simultaneous hour. He only puts in one hour's work, he is paid under the schedule for those two services. We have no turns of that character at all. On interurban electric railroads we pay the man per hour according to the job he does, and for the number of hours he does it. (133)

The characteristic of our operation is short trains frequently run with a maximum of service to the customer, and it produces a high labor cost per unit, and for the general operation of the interurban, all the other operating factors involved, it produces a reasonable and I might say comparable total operating cost. It is that very type of service that raises our labor cost per car mile or per train mile that makes us an interurban, and that very fact means that if you would take the type of labor relations and labor contracts off of the steam railroad and try to force them on these little interurban operations,
116 you would then produce a labor cost that would be practically confiscatory. In other words, where our costs now, as I *recall*, are better than four times the unit cost of the Union Pacific, if we would attempt to impose upon our railroad the same type of steam railroad labor contract as is imposed on the Union Pacific, it would double our costs, maybe two or three times more. It would add from 100 to 200 per cent more to our labor cost and create an impossible situation. (134) In comparison to our present cost of $3.00 to $1.50 on a steam railroad it would impose on us a cost of $6.00 or $7.00, compared with $1.50 on a steam railroad. As a practical proposition such cost would at the present time put us much further in the red, so that the continuance of our operation would be seriously jeopardized. We have been in the red during the depression but were not prior thereto.

Q. (By Mr. Howell): Do you know if the wages paid on the steam railroads in this territory are standard with those paid on steam railroads throughout the country?

Mr. Matheson: If your Honor please, in behalf of the defendant we would like to object to the question, because it is based upon an assumption that if the road were subjected to the provisions of the Act the same schedules and contracts—labor contracts,—would be imposed upon this road that are imposed upon a steam railroad.

Mr. Howell: That is what I am going to prove a little later.

Mr. Matheson: We object to it on that basis, because that (135) is merely an assumption, and not borne out by the provisions of the Act.

The Court: I don't know what might result. You
117 claim that would be the practical result of it in the outcome, so you can go ahead.

The objection will be overruled.

Mr. Matheson: Exception.

(Thereupon the last preceding question was read by the reporter.)

The Witness: They are the western standard, I think possibly a little higher than the southeast portion of the country and fairly comparable with the east. There is not a great divergence between the basic standards. (136)

I would say very definitely that in normal conditions under our present method of interurban operation it is my opinion that we can operate in the black and keep out of receivership, but I am very definite in the opinion that the imposition upon this property of the type of labor regulations—and this is an opinion—implied by the Railway Labor Act—and exemplified to us since an attempt to impose that Act has been made upon us, would render very serious the question as to whether even in normally good times this railroad could operate without a receivership and consequent insolvency.

When this law was passed in 1926 the Railway Labor Board then in charge of the administration of the law, with an exception in the law identical to the one that is there today, ruled that this railroad and railroads of this character were interurban railroads and it was not the intent of Congress to subject the properties to that type of—I would hate to wager a guess on the number of units there were of that type in operation at that time. (137) There were a great many. There were such railroads in almost every community in the United States, in the more populous areas.

I think a discussion before the Congressional committee made it quite plain what Congress had in mind when it made the exception to the Labor Act, and the ruling of the first Railway Labor Board excluding our company is quite clear.

118

Our wages are comparable with the wages paid by other interurbans in this area of our type. During the last decade, that is, from 1926, we have reached a high point in wages. We have made reductions during the heaviest depth of the depression, and we have made increases as business revived. (138) We have had a contract with our employees. This con-

tract is peculiar to our road as compared with steam railroads but not peculiar to our road as compared with other interurban railroads of the same character. The latter have been working under generally similar labor, working conditions and scales of pay. Some have had contracts, as we have had, and some have operated without contracts. I don't know of any other electric road similar to ours that is paid the same wages and conformed to the contracts made with steam railroads by its employees. I have heard of some controversies on electric railroads that are subsidiary to steam railroad transportation systems, like the Pacific Electric, but I could not answer to the result of their negotiations.

I know of no independent electric railroad that (139) operates with very materially different labor conditions and requirements from our own and I know that the other two interurbans in Utah are almost identical with ours. Both of those used to be in receivership.

I do not know the number of the decision by the Railway Labor Board heretofore referred to by me. It might be, as a matter of fact, that the decision referred to was not a decision under the 1920 act but rather under the 1926
119 act. I think that under the 1926 act the Board never attempted to enforce the law as to interurban railroads.
(140)

(Plaintiff's counsel offered as Exhibit 29, decision of the Railway Labor Board, dated December 11, 1920, in Docket No. 26-A, involving a number of electric interurban railroads and the various railroad brotherhoods. Whereupon the Court said: "The court will take judical notice of it. You may file it for the convenience of the court," which was accordingly done.)

I have finished with my analysis of the exhibits up to and including 25.

Neither the plaintiff nor its predecessor was ever under the Federal Control Act. At the time of the Federal Control Act and its consequent proclamation we did not consider ourselves as being under federal control, by reason of the local interurban characteristics (141) of our property, and subsequently we were notifed by the government that we were not under federal control, their method of investigation being a relinquishment notice.

Paper marked exhibit 26 is a photostatic copy of a letter received by us from the office of the Director General of Railroads. (142)

Exhibt No. 27 is a chronological history of the labor agreement existing between the various crafts of employes of the Utah Idaho Central Railroad and its predecessor companies. The exhibit shows that there was an agreement in existence with Division 418 of the Amalgamated Association of Street and Electric Railway Employes of America, which is an affiliate of the American Federation of Labor, which agreement included trainmen and shop men and substation operators; that
120 the first agreement was in effect on the 25th of May, 1909, and continued by renewal and agreements, but continued without break until June 1, 1936, at which time a renewal of that agreement was not effected by reason of the complications involved in this present controversy. I have an actual copy of the latest contract, which I will attach to the aforesaid exhibit. (143) On June 1, 1936, or prior to that time, our labor relations were disturbed through organizations —efforts by organizations other than the one with which we had a contract. The net result of that disturbance being that on June 1, 1936, we entered into labor contracts expiring in 1941 with our shop, trainmen, substation operators and station employees, through their own associations as evidenced by these two contracts, and have no contract at the present time with our train service employees who have been included in this other contract since 1909. The two contracts which counsel has are the two that were subsisting on June 1, 1936, and expire in 1941.

(Said labor contracts were marked by the reporter Exhibits 27-1 and 27-2) (144)

During the existence of this company, or my connection with it, there has never been a strike or a threatened strike. These contracts have always been renewed through amicable negotiations.

Exhibit No. 28 is a condensed income statement of the property for the years 1930 to 1935, inclusive, a six-year period, and the statement shows the operating revenue, expense deductions and income deductions and indicates that for this six-year period the company has operated at a deficit ranging from $17,900 in 1935 to $68,400 in 1931. In calculating the

deficit we have charged taxes, and interest on the first
21 mortgage only. We have paid the taxes; we have not
paid all the interest on the first mortgage. (145) We
ve no second mortgage and we are two coupons or one year
ind in the interest on the first mortgage. The interest rate
six per cent. Taxes are not due for this year, but we have
oney on hand to pay it. The company has never paid in
vidends to its stockholders.

Mr. Howell: If your Honor please, in order that the record
ay be clear, I offer in evidence Plaintiff's exhibits that have
en identified and numbered 1 to 28, inclusive, including
hibits numbered 27-1 and 27-2, being the labor contracts.

Mr. Thomas: If the court please, in order to (146) preserve
ur record, on behalf of the Interstate Commerce Commission,
move that all of the evidence presented by the plaintiff, both
rbal and including these exhibits just offered, be stricken
t as incompetent and irrelevant to any issue properly before
e court.

Mr. Matheson: The defendant joins in that motion, your
onor.

The Court: The motions will be denied.

Mr. Thomas: Exception.

Mr. Matheson: Exception.

The Court: Now you renew the offer,—

And do you want that to stand as an objection to these
hibits?

Mr. Thomas: Yes, your Honor.

Mr. Matheson: Yes.

The Court: The exhibits may be received.

(Copies of said exhibits Nos. 1 to 28, inclusive, are attached
reto.)

The Witness: The plaintiff company upon reorganiza-
22 tion, after it came out of receivership in 1926, issued
20,000 shares of non par common stock and two million
llars in first mortgage bonds. These issues were reported
the Interstate Commerce Commission on annual report form
. For the period ending December 31, 1926, a report was

filed with the Commission about April 1st, on page 218, schedule 251 of which the company reported the issuance of the 20,000 shares of common stock, and in the same report on page 220, schedule 261-M the company reported the issuance of two million dollars of bonds secured by first mortgage and trust indenture. (148)

And in the same report to the Commision, in the attachment labeled "Explanatory Remarks", in explaining the institution of the new company and its acquiring of the physical properties, the company advised the Commission in the following words, quoting from this explanation:

"And in consideration of said Delaware corporation
123 issuing to the committee for the benefit of the bond holders represented by it, twenty thousand shares of capital stock of said Delaware corporation and two million dollars in first mortgage bonds of said company, secured by a mortgage and trust indenture upon certain of the property and assets of the Delaware corporation, the said committee agreed to cause said property and assets of the old company to be conveyed and transferred to the Delaware corporation, and in the order of the court confirming the sale of the said property and assets to said committee the said receiver was authorized and directed by the court, in accordance with said agreement, to transfer and convey all of the property and assets of the old company to the Utah Idaho Central Railroad Company, a Delaware corporation, which was accordingly done by an appropriate conveyance and bill of sale, and in accordance with said agreement and said order confirming sale the Utah Idaho Central issued 19,995 shares of its capital stock and two million dollars principal amount of its *forst* mortgage bonds and delivered said stock (149) and caused the trustee of said bonds to deliver said bonds to said committee for distribution among the bond holders represented by said committee."

The committee referred to in the explanation above quoted was the committee representing the bond holders of the company in receivership.

Subsequently the Interstate Commerce Commission
124 under date of February 28, 1928, (150) through M. O. Lorenz, Director of Statistics, addressed a communication to our company (152) in which he made this request as to the securities issued by the company:

"Please furnish a brief statement as to how the sale of property was consummated on November 5, 1926, and a copy of the contract of sale showing purchase price and consideration given.

"You will observe from section 3 of page 91 of the Uniform System of Accounts for Electric Railways issued under order of the Commission pursuant to law duly conferred upon it, that the investment account should be based upon the actual cost.

"In the event that consideration given in the purchase of the property is anything other than cash, the money value of the consideration at the time of the transaction should be charged to investment."

In the same letter, on the second page, he raises the following query:

"Page 219. Particulars of the issuance of the capital stock without par value were not given in schedules 251-A.

"Pages 220, 221 and 223. If the nominal date of issue of the mortgage bond does not come within the period covered by this report, should not the Returns in schedules 261-M and 261-P be cancelled?

"This change will affect the dates of the (153) schedules 200-A and 200-L also."

In said letter the Director of Statistics is referring to pages in schedules contained in the report covering issuance of the capital stock and the first mortgage bonds.

Under date of February 5, 1929, in a letter from the In-
125 terstate Commerce Commission, Bureau of Statistics, on the second page, the following paragraph reads:

"Page 223. If we are to understand from your remarks that the bonds were nominally issued as of November 21, 1926, that is the certificates were signed, sealed and placed with the trustee for delivery, that date should be shown in Column B, line 1." (154)

This refers to the same report.

Under date of March 20, 1929, in a letter addressed to Mr. M. O. Lorenz, Director of Statistics, Interstate Commerce Commission, signed by our company's auditor, on the second page the following paragraph appears:

"Page 219. To meet requirements of Schedule 251a, this will be your authority to insert data as follows:

"Column A. Class of stock, A-1.

"Column B. Date of issue, 11/21/26.

"Column C. Purpose of issue and authority.

"This stock issued as a part of plan of reorganization of new company and authorized by the bond holders of new company. The bonds held by holders of the new company were secured by mortgage and trust indenture on property and assets of said company. See schedule attached to page 100 for further explanation.

"Column D. Par value. Insert 'no par value'.

"Column E. None.

"Column F. None.

"Column G. None."

Where it said—reference is made to the explanation—it refers to the specific direction and schedule attached to page 100 (155) advising the Commission of the issuance of this stock and these bonds.

126 A letter from the Commission's Bureau of Statistics, dated April 9, 1929, signed by M. O. Lorenz, in the second paragraph reads:

"Pages 200, 202 and 203. I have noted your statements in explanation of the entries made in your accounts in connection with the acquirement of the property of the Utah Idaho Central Railroad Company at receiver's sale, and have referred same to the Bureau of Accounts for their consideration."

Following that a letter from the Commission's Bureau of Accounts, dated May 29, 1929, signed by Alexander Wiley, Director, contains the following statement in the second paragraph:

"From the explanatory remarks attached to page 100 of the report it is noted that the former company became insolvent, that a receiver was appointed on August 20, 1926, that the property was sold in two parcels at public auction by order of the court on November 5, 1926, for one and one-half million dollars and one hundred dollars respectively, to a committee of

bond holders which assumed certain indebtedness of the company and of the receiver, and that the present company organized on October 18, 1926, and entered into an agreement (156) with the committee to receive title to the property and assets, to pay the indebtedness of the old company and of the receiver assumed by the committee, and to issue to the committee first mortgage bonds in the amount of two million dollars and twenty thousand shares of capital stock which the annual report shows are without par value. The property having
127 been sold at public auction and purchased by a new organization, the continuance of the accounts of the insolvent company is not permissible. In order that due consideration may be given the transaction you are requested to furnish this Bureau with a copy of the order of the court confirming the sale of the property, also a copy of the order of the Public Utilities Commission, if an order was issued."

The last-named letter was addressed to Mr. E. L. Morris, Auditor of the Utah Idaho Central Railroad Company.

A letter addressed to J. A. Howell, Attorney at Law, from the Commission's Bureau of Accounts, dated August 17, 1929, contains the following: (157)

"It appears that the property was acquired at the receiver's sale for the sum of one and one-half million dollars and the bond holders of the predecessor company exchanged the bonds of the old company at a proportionate rate in payment of the cost of the new company and assumed certain liabilities.

"Under the classification rules this transaction should be treated as a purchase of road by the new company and accounted for as outlined in Account 527, cost of road purchased."

And again, in that letter, the following appears:

"In order that this Bureau may be fully informed as to the nature of the accounting performed in connection with the acquisition of the property referred to, will you please submit for consideration copy of the original entries recorded in the new company's books in respect thereto. With the submission
of those *entires* please explain how the money value of
128 the securities given in exchange for the properties was computed, and describe fully the nature of the assets acquired and the liabilities assumed by the company in connection with the acquirement of the property in question."

Mr. Howell, as attorney for the company, had previously written to the Commission (158) and I have in my files a copy of said letter from Mr. Howell to the Commission, attention of Alexander Wiley, dated December 19, 1929. Said letter reads:

"The Utah Idaho Central Railroad Company, a Delaware corporation, which although for business (159) reasons kept substantially the same name, was nevertheless a distinct and separate company from the old company, and purchased the properties from the committee which had purchased them at the receiver's sale, not for the same consideration as paid for by the committee at the sale, namely, the sum of one million and a half dollars, but for the issuance to the committee of bonds of the new company in the principal amount of two million dollars, and twenty thousand shares of the common stock of the new company, of which 19,995 shares have been issued.

"In other words, the Utah Idaho Central Railroad Company purchased this property not for the sum of one and one-half million dollars, but for the bonds and stock of the company as above specified.

"I am enclosing you a copy of the agreement between the Utah Idaho Central Railroad Company, a Delaware corporation, and the committee of bond holders who were purchasers at the receiver's sale.

"You will observe from that contract that the considera-
129 tion for the properties was two million dollars in first mortgage bonds of the company and twenty thousand shares of capital stock of the company."

A letter from the Commission's Bureau of Accounts, dated April 7, 1930, to E. L. Morris, Auditor of our company, reads in part as follows: (160)

"Your annual report for the period November 21, 1926, to December 31, 1926, shows in explanatory remarks attached to page 101 that the new company issued securities in the amount of two million dollars and took over all of the physical properties and other assets of the old company, and assumed its liabilities.

"Under the Commission's rules this transaction should be treated as a purchase of road by the new company and accounted for as outlined in account 527, cost of road purchased."

A letter signed Alexander Wiley, Director, addressed to me as General Manager of the plaintiff company, dated December 26, 1930, reads in part:

"From your letter it is now understood that the accounts of the new company did not in fact include adjustments which should have been made on the books of the predecessor company, but that the credit to profit and loss of $728,154.84 represents a portion of the 3,499,995 assigned (?) as the total (161) money value of the non par stock issued as part consideration of the properties acquired. With the definite understanding that the values assigned to the railway properties and the other assets acquired and the liabilities assumed as set forth on page 2 of your letter represents actual money
130 costs and further that your company is responsible for the accuracy thereof, this Bureau authorizes their audit in the sums indicated, with the provision that the sum of $728,145 shall be cleared from Profit and Loss to Account 423, Capital Stock.

"As soon as possible please furnish this Bureau with the proposed plan of distributing the cost of property to the appropriate primary investment accounts. Also submit a copy of the adjusted entry eliminating the sum of $728,145 from Profit and Loss."

(Whereupon plaintiff offered in evidence the portions of each of the above-named letters which had been read into the record and the same were admitted by the court.) (164)

P. H. Mulcahy, continuing.

The plaintiff company never asked permission or certifi-
131 cate from the Interstate Commerce Commission under the provisions of Sec. 20(a) of the Transportation Act for the issuance of the securities above named. The Commission has never made any complaint about the issuance of these securities without permission. (165)

The two pamphlets just marked for identification plaintiffs' Exhibits 30 and 31, are respectively the accounting regulations of the Interstate Commerce Commission under which electric and steam railroads keep their accounts, and Ex. 31 applying to the accounts kept by electric railroads is a copy of the regulations under which the plaintiff company makes its reports. The title page of Ex. 30 is "Uniform system of Accounts for

Steam Railroads Accounting Classifications * * * Interstate Commerce Commission in Accordance with Section 20 of the Act to Regulate Commerce, Revised to January 1, 1916." (169) The title page of Ex. 31 is as follows: "Uniform System of Accounts for Electric Railway Prescribed by Interstate Commerce Commission in accordance with Section 20 of the Act to Regulate Commerce, Issue of 1914." (The Court admitted said exhibits in evidence and stated that it would take judicial notice of the regulations.)

Prior to becoming a business manager for the plaintiff company I was its auditor, and for some years prior to becoming general manager I followed the vocation of auditor with the Southern Pacific Railroad (170) and subsequently with the plaintiff company. I am able to state the essential differences in the manner of accounting of electric railroads and steam railroads as prescribed by the regulations of the Interstate Commerce Commission. The steam railroad classification 132 and accounting requirements are substantially in greater detail than those of the electric classification. Likewise, the steam railroad classification takes into consideration, as compared with the electric classification, the distinct or different type of the two carriers. To illustrate: in one part of the electric railway classification both debits and credits for hired equipment—in other words, the amount that the carrier might receive for the use of its equipment on other carriers' lines, and the amount it might pay to other carriers for the use of their equipment, is considered in the electric classification as operating revenue and operating expense, while the same character of expense on a steam railroad is not considered in the operating revenue or expense accounts at all, but rather an income credit or an income debit, apparently on the theory that—

("Mr. Thomas. We object to this. The Commission's regulations speak for themselves. Why they were made is something only the Commission could say.

Mr. Howell. I submit as an auditor, and therefore an expert, I have a right to have his opinion as to why the difference. (171)

The Court. The objection will be overruled.")

(The witness resuming) This is apparently on the theory that small interurban railroads are not large owners of freight

equipment, do not own anywheres near their relative proportion of freight equipment to freight mileage, and that it is a common and usual practice for small interurban lines to receive their freight car equipment from their trunk line con-
133 nection; while, on the other hand, the investment or trunk line steam railroads in freight equipment is substantial and it is higher; or to other roads is in the nature of an income on substantial investment rather than merely an operating cost or an operating income. The same general distinction applies to joint facility debits and credits. In the electric classification rental payments and receipts, both debits and credits, and joint facilities, are included in operating expense and operating revenues, while in the steam classification they are included as income debits and income credits. Further, in the steam classification of power costs, that is, fuel costs and costs for propulsion power, are included as a transportation item in the general heading "Costs of Conducting Transportation"; the maintenance of any facilities used to develop or supply those power requirements is included in way and structure maintenance, while in the electric classification the entire power costs, including the price of electricity, the operating cost of the power stations (172) and the maintenance of the buildings and machinery in those stations, are set up in one general power account. Throughout the classifications, there are minor differences, that is, relatively minor differences, leading to a much enlarged and more detailed requirement from steam lines than from electric railways. There is likewise in the steam railroad classification a provision that while electrified portions of steam railroads may be accounted for for the carriers' information in the sub-accounts of the electric classification, in the report to the Commission they shall be reported under the steam classification. I have detailed the most prominent differences. (Plaintiff's counsel thereupon presented a copy of the articles of incorporation of the plaintiff company, which were marked for identification as plaintiff's Ex. No. 32.) and the same were received in evidence. (173)

(Witness resuming) The plaintiff company does not
134 own any steam power equipment at all, and no steam power is used in the operation of the railroad. The plaintiff company has never received any advance or moneys from the United States under the Federal Control Act or under the Transportation Act, or any other act of Congress. I have here copies of the contracts with our employees that were in

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force prior to the contracts which have been introduced in evidence. (174) (Certain contracts marked plaintiff's Ex. 27-2, and being offered in evidence were admitted by the Court.)

"Mr. Howell. Q. I wish you would detail how the differences between this contract which was in force prior to the contracts that were introduced in evidence this morning, came about.

Mr. Matheson. If your Honor please, we believe that to be wholly immaterial and therefore object to the question * * *.

The Court. Objection will be overruled. You may have an exception." (175)

(The witness resuming) As indicated in Ex. 27, we have had continuous contractual relationships with our employees, and prior to June 30, 1936, we were operating under a contract between the company and Division 418 of the Amalgamated Association of Street and Electric Railway Employes and Coach Operators of America.

This is a member union of the American Federation of Labor, and is the labor organization that for many years has handled labor relations on street and interurban railways.

With the attempted imposition of the Railway Labor
135 Act on our property and the interference from the so-called Steam Railroad Brotherhood, the Brotherhood of Railway Trainmen, the situation developed where it was impossible to continue this contract with the electrical railway brotherhood, and as a result of the disturbance created prior to June 30, 1936, the net result was that a substantial portion of the employees covered by the Amalgamated contract associated themselves together into their own organizations and entered into contracts with the company running until June 1, 1941. Those are the contracts that were offered this morning as 27-1 and 27-2, (176) our labor situation now being that all of the shop employees and station employees are operating under proper labor agreements, and that out of a total of one hundred and forty to one hundred and fifty employees there are between twenty-five and thirty that were on this original contract that are now endeavoring to proceed under the Brotherhood of Railway Trainmen. (177)

Prior to the time I have mentioned I dealt with a unit of the American Federation of Labor. We were unable to con-

tinue to deal with that unit because the claimed uncertainty of our position in the Railway Labor Act put us in a position that if we were under that Act, we were not permitted even to discuss the propriety of the attempt of a very small part of the employees to impose on this railroad this standard Steam Brotherhood, and we reached the impasse where the company, until their status was clarified, could take no action, and as I recount it, all the employees from stations and shop, mechanical and electrical departments, voluntarily, themselves, associated in their own organization and left the situation with twenty-five employees who formerly enjoyed a contract, without a contract. The action taken by those employees who became parties to this new contract was entirely voluntary upon their part and without any influence or discussion on the part of the company. (177)

136 The first attempt on the part of one of the standard Steam Railroad Brotherhoods was December 1, 1933, in the form of a letter of that date. (Said letter marked for identification plaintiff's Ex. No. 33, said letter being addressed to "P. H. Mulcahy, General Manager, U.I.C. R.R. Co., from C. H. Tanner, Deputy President, Brotherhood of Railway Trainmen, dated December 1, 1933. Plaintiff's counsel offered said Ex. No. 33 in evidence.)

Mr. Matheson. We object to it, your Honor, as being wholly immaterial, between parties not involved in this suit.

The Court. Do you claim anything for it?

Mr. Howell. Yes, I do, if your Honor please.

The Court. Then I will overrule the objection. (178)

(The witness resuming) Upon receipt of said letter I replied to it and have here copy of said reply. (Said copy marked plaintiff's Ex. 34, being dated December 12, 1933, addressed to Mr. C. H. Tanner, Deputy President, Brotherhood of Railway Trainmen, and signed by the witness, being offered in evidence it was admitted by the Court.) (179) Subsequently I received a communication from Mr. Tanner, Deputy President of Brotherhood of Railway Trainmen, (180) and here present said reply. (Marked plaintiff's Ex. No. 35. Offered in evidence.)

"The Court. You make the same objection.

Mr. Matheson. Yes, I do, your Honor.

The Court. Same ruling."

I subsequently replied to that letter, and I here present
137 a copy of my reply. (Said paper marked plaintiff's Ex. 36. Offered in evidence by plaintiff and objected to by Mr. Matheson. The same was admitted in evidence by the Court and exception allowed.) (181)

I subsequently received another letter in relation to this matter from the Brotherhood of Railway Trainmen, and here present letter dated January 8, 1934, addressed to me, signed W. H. Smith, Chairman, W. A. Stone, Vice Chairman, and W. Jessup, Secretary, on the stationery of the Brotherhood of Railway Trainmen. (Offered in evidence by plaintiff's attorney. The Court over the same objection by Mr. Matheson admitted the said Ex. 37 in evidence.) (182)

I replied to said letter, and here present copy of my reply dated January 17, 1934, addressed to Mr. W. H. Smith, and the other persons who signed the letter previously referred to. (Offered in evidence by the Court, objected to by Mr. Matheson, it was admitted in evidence by the Court.)

Subsequently I received another letter from the same gentlemen dated April 13, 1934 (which letter was marked for identification Ex. 39, offered in evidence, same objected to by Mr. Matheson, admitted by the Court.) (183)

Attached to the letter which has been admitted as Ex. 33 was a proposed agreement between our company and the Brotherhood of Railway Trainmen. The document which has been marked for identification plaintiff's Ex. 40 is said agreement, with the exception that the pencil notations now appearing thereon were not there when I received it. Those pencil notations are merely our present rates of pay and were made by me to compare the proposal with our present agreement. (Offered in evidence by plaintiff's counsel, same objection by Mr. Matheson; said Exhibit 40 was admitted in evidence by the Court.) (184)

The agreement submitted in Ex. 40 was never consum-
138 mated. Subsequently I had a conference with representatives of the Brotherhood of Railway Trainmen. It was on July 2, 1936, in my office in Ogden. Present were D. Mackenzie, Vice President of the Brotherhood of Railway Trainmen, Mr. Beckett, of Ogden, Vice Chairman of said organization of

the Oregon Short Line, and Mr. Rampton, of Ogden, a conductor of our company. I was present and Miss Keating was the reporter that took the transcript of the conference; what was said there was taken down in shorthand and afterwards *transcribed*.

(Mr. Matheson. We object to that as being wholly immaterial. Cannot see it has any bearing upon the subject.

The Court. What do you claim for it? (195)

Mr. Howell. I claim this, if your Honor please, this is carrying out the previous demand of the Railroad Brotherhood for action under the Railroad Labor Act. I will show by this that this conference was had specifically under the Railway Labor Act and will tend to show, as we think, what we have alleged in our complaint and what has been denied by the answer, namely, the threats of prosecution under the Railroad Labor Act if we should refuse to comply with it.

Mr. Matheson: Do you claim an official body assembled there?

Mr. Howell. Oh, yes.

Mr. Matheson: Under the provisions of the Act?

Mr. Howell. Oh, no, I don't claim this was that; I claim these were the negotiations which would have, if we had acquiesced in them, led to—

Mr. Matheson. We submit that is wholly immaterial.

The Court: You will admit you would have prosecuted them if they had not brought this suit, and will do it still
139 unless the court enjoins you? That would go to the jurisdiction of the court, invoking the jurisdiction of the court to enjoin you. You might say you never had any intention of—

Mr. Matheson: We contend, though, your Honor, the prosecution is only upon the authority of the Attorney General. We could not say without that instruction that we would prosecute even a violation.

The Court: I suppose the purpose is to show you (186) really considered you were in some danger or you would not have brought this lawsuit, is that the idea?

Mr. Howell. Yes.

Mr. Cass. May I direct attention, if your Honor please, to section 2—10th of the Railway Labor Act, which seems to require the district attorney upon request of the designated representative of labor to start prosecution.

It reads this way:

"It shall be the duty of any district attorney of the United States to whom any duly designated representative of the carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for enforcement of the provisions of this section."

It seems to me that ties into the question directly of what these labor men were doing in their negotiations with this property.

The Court. You do not feel inclined to admit that Mr. Shields did intend to prosecute and would do it yet if the court doesn't stop him?

Mr. Matheson. It appears, your Honor, the plaintiff wishes it to be shown they have violated the Act.

The Court. That would be your position, of course,—
140 that is your position now, but if you are not willing to admit that, then they can lay such ground work as they can to show they were in danger of being prosecuted under the Act. (187)

Mr. Matheson: We could not admit they were in danger, your Honor.

The Court. You can admit that?

Mr. Matheson. We can not. In the first place, the Act specifically requires the authorization of the Attorney General.

The Court. Then I will let you take this proof for the purpose of showing you were in jeopardy, more or less, or supposed you were.

Q. (By Mr. Howell) Now, do you recollect the question, Mr. Mulcahy?

A No, I do not.

The Court. You asked him what the interview was.

Mr. Howell. The only reason I thought it would be better to have the question read was that it would avoid the necessity of another objection.

(Witness resuming) At the opening of the conference I said to the gentlemen, "Will each of your gentlemen tell me who you are and whom you represent?"

Mr. Mackenzie replied, "I am D. A. Mackenzie, am vice-president of the Brotherhood of Railway Trainmen. My temporary address is Salt Lake City, care of the Hotel Utah.

"Mr. Beckett, here, is acting just as my chauffeur, and is not here is any official capacity." (188)

I said, "Mr. Beckett, will you give me your address?"

"I live at 812 Twenty-eight Street, Ogden, and am vice-chairman of the Oregon Short Line Brotherhood of Railway Trainmen."

Mr. Mackenzie. "The majority of your train service
141 employees have affiliated themselves with our organization and have requested that we represent them, and it is usually customary to call on an official representing the company and arrange for a conference."

I said, "You say 'majority'. How many do you mean?"

Mr. Beckett replied, "About eighty-five per cent."

I asked, "How many men do you represent?"

Mr. Beckett replied, "I would say twenty-five or thirty train service men. I have a list of them."

I requested that he file a copy of the list with me.

"Mr. Rampton, our secretary of the lodge No. 68, has a list and we could give you a copy."

I requested that it be sent up to me.

I then asked Mr. Mackenzie, "What class of employees do you represent?"

His reply, "Motormen, conductors and brakemen."

I asked, "How about motor coach operators?"

He replied, "What are their duties?"

I said, "Coach operators who operate on main line coaches."

He said, "If they are operating out of the city, yes. I am not very familiar with that phase of it." (189)

I asked, "Do you represent motor coach operators who have interchangeable rights?"

His reply, "Yes."

I asked, "How many of these twenty-five or thirty men are members of the Brotherhood of Railway Trainmen?"

Mr. Beckett replied, "I would say there are about twenty-three or twenty-five of these men in the Brotherhood now."

I asked, "You will give me that actual information?"

His reply, "Yes."

I asked, "Does the Brotherhood of Railway Trainmen permit the joining of motor coach operators?"

Mr. Mackenzie replied, "Yes."

I asked, "Where they do not have interchangeable rights?"

His reply, "Yes."

142 I asked, "You have amended your Articles recently, then?"

His reply, "Yes. Our laws permit our president to interpret the eligibility, and it has been interpreted by Mr. Whitney that such men are eligible."

I asked, "As to those twenty-three or twenty-five men, are they full-fledged members, or are they members who are being tentatively taken in at a much reduced initiation and limited dues pending what the Brotherhood does?"

Mr. Mackenzie: "They are taken in as bona fide members, subject to the same dues and assessments. We have (190) only one class of membership."

I asked, "These twenty-three or twenty-five men that you refer to as members, do they understand they are subject to full dues, and so forth, of the Brotherhood of Railway Trainmen?"

Mackenzie replied, "Yes."

I asked Mr. Rampton his position in the conference.

He replied, "I am chairman of the Utah Idaho Central Committee representing employees."

My question, "Who are the balance of the Committee?"

His reply, "W. A. Stone, vice-president, J. T. Watson, additional member."

Mr. Mackenzie then said, "You understand, Mr. Mulcahy, that it is not necessary for them to be members of the Brotherhood of Railway Trainmen under the law."

I asked, "Under what law?"

His reply, "The Railway Labor Act."

I then said, "I assume you are familiar, Mr. Mackenzie, with the fact that the Utah Idaho Central has pending in the Federal Court of the District of Utah a complaint and request for an injunction against the United States District Attorney asking that the court restrain that agency of the government from enforcing the Railway Labor Act on this company?"

Mr. Mackenzie replied, "I was present at the hearing held
143 last Saturday, and I spoke to Matheson, Assistant District Attorney, and told him that I understood there were two (191-) phases at issue in the court, one restraining the Internal Revenue Collector under the Railroad Retirement Act, and the other case had reference to the Railway Labor Act, and I called his attention to the fact that we propose to open negotiations in connection with the Brotherhood of Railroad Trainmen, and he advised me that he placed no restrictions on our doing so."

I then said, "For the purpose of an understanding, I would like you to verify this,—the action was brought on behalf of the Utah Idaho Central Railroad to restrain the United States District Attorney from imposing any penalties under the Railway Labor Act upon the complaint of this company alleging that we are not subject to the Act. The action brought on behalf of the company asked for a temporary restraining order. The government through Mr. Matheson asked for a postponement of the hearing."

Mr. Mackenzie then said, "I didn't see you there."

I continued, "I was present for a while. We were represented by Judge Howell, who raised the question with Judge Johnson that we were ready for trial but the government was not. Judge Johnson granted an extension of the case until the 21st of August and stated that he did not expect the government to take any steps in the meantime to impose any penalties of the Act.

"My opinion is that the negotiations which you have requested to initiate are closely tied up with the mandatory provisions of the Railway Labor Act, namely, outside representation, (192) mediation, adjustment and so forth. Those are the features of the Railway Labor Act which prescribe a penalty. In fact, they are the only mandatory features of the Act.

"It seems to me that in view of the pending court action,
144 or until the trial of that case on the 21st of August, Mr. Mackenzie, nothing can be done until we have a clear understanding."

Mr. Mackenzie replied, "You are declining to meet with us, then?"

My reply, "In view of the fact that you have based your conference on the right of representation granted by the Railway Labor Act, and in view of the fact that the district judge of the federal court has ordered that there shall be no effort made to impose the Act on our properties until the hearing of this case in his court, you should not request us to meet prior to that date.

"In other words, if the court holds that we are subject to the Act, certainly the path is pretty well charted, should we be unable to agree.

"On the other hand, if the court holds we are not subject to the Act, it will definitely determine our policy whether or not to negotiate with you. I think that is a fair proposition."

Mr. Mackenzie replied, "There is not any restrictions or penalties. I was up to the Capitol with Mr. Laiserson on some other matters, and you are making money. Your statements show (193) an increase in your net income."

Q. (By Mr. Howell:) Do you know who Mr. Laiserson is?

A. He is chairman of the Railway Board of Mediation.

I then asked Mr. Mackenzie how long he was to be in town, and he replied that he was working on the Orem line and would be there for a short time.

I then told Mr. Mackenzie I would mail a copy of this statement to him tomorrow, and suggested that "You go and talk to Mr. Matheson and show him our position in the matter. If there is any misunderstanding in the matter, suggest you advise me, and I will have Judge Howell, our attorney, 145 confer with both you and Mr. Matheson as to the statement of the court, and if necessary the three of you gentlemen go to the judge direct."

I mailed a copy of this transcript to Mr. Mackenzie at the Hotel Utah, according to my promise, and on July 8th received from Mr. Mackenzie the following letter —

Mr. Matheson. If the court please, we move to strike the testimony with respect to the conference referred to by the witness because of its immateriality.

The Court. The motion is denied.

(Plaintiff's Exhibit No. 41 was thereupon marked by the reporter.)

(Witness resuming) Subsequently I received a letter from Mr. Mackenzie after sending him a copy of the transcript I have just read (194) and said letter has been marked for identification plaintiff's Ex. 41. (Offered in evidence by plaintiff's attorney, same objection by Mr. Mackenzie, said Ex. 41 was by the Court admitted in evidence.)

(Witness resuming) I have made an estimate of the amount of the additional payments that would be required under the proposed contract which was submitted together with Ex. 33 and which contract has been introduced in evidence here as Ex. 40, and additional expense to the company through the adoption of the contract would be from thirty-five to forty thousand dollars per year. (195)

Mr. Matheson. Your Honor, we move to strike the answer of the witness as being wholly speculative and not officially a determination of any Board or Bureau of the Interstate Commerce Commission or the Labor Board.

The Court. It seeks to relate to proposed contract—I suppose by its terms it would require these additional payments as he calculated them.

Mr. Howell. Yes.

146 The Court. If any point about it, I would require you to have him state how that came about.

Mr. Matheson. We don't know of any basis for his conclusion.

The Court. Might take the contract, there, and tell us about it.

With that understanding, that he shows how he arrived at it, it may stand at present.

Mr. Matheson. Probably as a matter of his own opinion what might happen.

The Court. I don't know whether it is his own opinion or not. Maybe it shows on its face something.

Mr. Howell. It shows the rates, and all that, to be applied to the employees.

The Court. If the contract is any good for anybody it ought to state terms capable of interpretation.

Mr. Thomas. But that contract, your Honor, that demand is under the terms of the Labor Act, subject to consideration (196) by the Mediation Board and the Adjustment Board, in order to be enforced on this carrier it would have to be approved by them, so in estimating what the additional expense would be they are assuming those Boards organized under the Labor Act would approve of that, something which I submit they can not do at this time. When and if such a contract is approved—

The Court. He has got to convince this court—He is not coming here asking this court to adjudicate something that did not involve anything of any value. If you will admit it was something of substantial value that would be an increase, I wouldn't care about the detail of it, but at least they do not invoke an equity court's powers over a triviality.

Mr. Howell. That is the purpose.

Mr. Thomas. Admittedly it would have to admit if the
147 contract were put into effect it would increase considerably the expense. The point is, before that can be done

or expense entailed on them, it would require the approval of two boards—at least one of two boards.

When and if the Labor Board makes the requirement that they pay these increases, then and not until then have they a right to come to a court of equity and ask relief from an order of the Board. (Discussion) (197)

The Court. In any event, I will overrule the objection. (199)

(Witness resumi ) I arrived at the above stated estimate of the increased expense to the company by applying the contract rate on the first eight hours of passenger motorman calls for a rate of pay (199) of 56 cents per hour against our present sliding scale of thirty-nine and a half to forty-six and a half cents, the maximum increase there being sixteen and a half cents an hour, or in excess of forty per cent.

On freight motormen it calls for an increase from fifty-one to sixty cents, or an increase of nine cents per hour.

On passenger conductors the maximum increase requested in the first eight hours is sixteen and a half cents an hour.

On freight conductors, nine cents an hour.

On brakemen and trolleymen, six and a half cents an hour.

On main line motor coach operators, fifteen and a half cents an hour.

On Logan City coach operators, eight and a half cents an hour.

Now, that is for the first eight hours' pay. If the time of their run exceeds eight hours, their maximum increase in the case of passenger motormen is forty-four and a half cents per hour, or an increase of approximately one hundred and five per cent.

In the case of freight motormen, thirty-nine cents an hour, or an increase of approximately eighty per cent.

The increase in the other classifications of passenger
148 conductors, freight conductors, brakemen, trolleymen and coach operators for all labor in excess of eight hours,
(200) amounts to from eighty to one hundred per cent increase per hour.

The contract required that all work in excess of eight hours be paid at these extremely high increases; that eight hours be guaranteed as a day's pay, whether worked or not.

The practical application of a clause of that character on an interurban railroad would prohibit certain types of its operation whereby men are sent on short trips to haul in one car of provisions or one car of milk, because the guarantee of eight hours' pay for, say, two hours' work, would run to either an exorbitant cost or prohibitive situation. We would be faced with the proposition of standing exorbitant expense or being required to retire from certain types of business that is essentially interurban.

Another clause in the contract is that a regularly assigned man, after completing his regular assignment, is called for other work, would be paid time and one-half with a guarantee of not less than four hours.

Now, the operation of that clause in the contract would be practically this,—a train man called in Preston, Idaho, our northern terminus, to bring a passenger train to Ogden, Utah, would consume three hours' actual running time. We would be required under the contract to pay him for an eight-hour day. After he arrived in Ogden and we find it necessary to send him to Plain City, a point about ten or twelve miles above here, for a car of potatoes, we would (201) have been required to pay
him the eight-hour day minimum first from the run from
149 Preston to Ogden, then we consume forty-five minutes sending him to Plain City after he has worked three hours, and we will be required to pay him time and a half for not less than four hours, or in other words, time and a half at the rate of eighty-four or ninety cents per hour.

There is another clause in the contract that requires that trainmen called within four hours after the completion of a previous run will receive straight time.

That means that a man brings a train into Ogden, if he is called any time four hours after he is relieved from duty, he is paid the entire four hours during which he had been relieved.

And it further provides if he is called after four hours from the completion of his run he will be paid eight hours, irrespective of the time worked, and that so-called regular men called to do extra trips other than their regular run will be paid not less than eight hours, an illustration of that clause being that a regular crew leave Ogden at one-thirty, arrive at Preston Four-forty-five, leave Preston at five-ten and arrive at Ogden

at eight-twenty, which is one of our present schedules, and the man is actually at work seven hours and fifteen minutes, he will first be paid eight hours for that work and if we ask that man to go to Brigham City and back, which would take approximately two hours more, he would be paid another eight hours for that two hours. (202)

In addition to the overtime rate which is shown in the contract and which is one and one-half times the regular rate, section 8 provides that for the ninth and tenth hour this shall be one-eighth the daily rate, and after ten hours three-sixteenths of the daily rate,—or another multiple of fifty per cent is added.

Section 11 requires that not less than three men shall be
150 on any passenger train. Our present passenger trains consist of one car. We operate them with two men, many railroads with one man. This contract provides we shall not send out a one-car passenger train with less than three men.

Section 12 requires that we shall not send out a freight train with two cars unless we have four men on the crew.

Many of our trains, such as milk service, a somewhat peculiarly distinct interurban service, is operated on our property and by other interurbans with two men.

Section 15 requires that we may not use a crew in operating switching work without at least four men.

Section 18 provides that any employee censured or dismissed shall have the right to be represented by an outsider, and goes into some detail as to the stenographic records to be kept and necessitates that all witnesses be heard at the same time and all be present at the same time.

That is somewhat unique in the relations between an employer and employee. (203)

Section 33 provides when two or more classes of service are performed in any one day the rate for the highest class shall be paid for the entire day.

For instance, if a brakeman who is a qualified conductor works as a brakeman for seven hours, and then for one hour is used as a conductor on extra work, he will be paid for his entire day at the higher rate, or at the rate of a conductor,

notwithstanding that seven-eights of his service and responsibility was given the company as a brakeman, or at a lower rate of pay.

Section 34 provides that notwithstanding the penalty for overtime after eight hours, crews may not be tied up until after fourteen hours unless they have reached their home terminal.

Section 36 provides that trainmen will not handle train orders at any agency station.

That is in view of the fact that the entire operation of
151 this property is based upon a direct transmission of train orders to conductors, and such a rule would require this railroad company to hire qualified train order operators at every station along our railroad and make a complete change in our agency stations.

The normal method of operating by train order or an interurban electric railroad is that the conductor in charge of the station contact the dispatcher directly by telephone. The order is given to the conductor by phone, who copies it down in the prescribed form and repeats the same back to the dispatcher. (204)

Now, this rule would require the company to employ a third party in that transaction who would be subject to the Commission's regulations as to railroad telegraphers, hours of service, and so forth, who would listen to the dispatcher and copy the order down for the conductor, and then take the order which he has copied down and hand it to the conductor, who would read it back to him to see if it was correct.

In speaking above of the conductor of the station I meant conductor of the train at the station.

It provides that the company guarantee that during the term of its contract not less than eighty per cent of the men actually employed will be members of the Brotherhood of Railway Trainmen, and that the company guarantees that this (205) percentage will be maintained at all times.

In other words, if this contract be entered into tomorrow, and twenty-two per cent of our older employees did not see fit to join the Brotherhood of Railway Trainmen, the burden would

be placed upon me to take those twenty-two and pick
152 out two that I would discharge for no other reason than to keep up the percentage of employees who are members of the Brotherhood of Railway Trainmen.

I do not quite understand that clause. As the contract was offered pursuant to the Railway Labor Act, it apparently asked us to agree to violate it.

I have recounted the major and important additional burdens and requirements of this contract if imposed on our property. This is the contract, the offering of which influenced us to seek court protection against the burdens of the Railway Labor Act.

Mr. Matheson. I move to strike the testimony of the witness with respect to the proposed contract because it is immaterial and it is apparant that plaintiff has come to this court rather than to the Adjustment Board, a matter which is specifically provided for in the statute. Furthermore, it is only a demand, and therefore not binding in its present form, and therefore would be immaterial at this time.

The Court. The motion will be denied.

(Witness resuming) By taking the terms of this contract and applying it to the number of men we have employed in the train service is the method by which I arrived at the estimate that it would cost an additional $35,000 a year. (206)

This contract would apply to 28 employees out of an
153 average of 141. We estimate the burdens of this contract would increase our labor cost from $35,000 to $40,000 a year. As a railroad operator I can only assume that if we are forced into a position whereby 28 out of 141 employees can threaten an increase in operating expenses of that much, that if the matter spreads to the other 141, we stop railroading.

The Court: Let me interrupt you. You mean to say, then, that sort of contract would be unfair and impractical if applied to your railroad?

The witness: It would be unfair and impractical, and in addition to that, your honor, if applied would have produced an increase in the labor bill that would prohibit us from continuing in existence.

The Court: Would it be unfair—or is it unfair when applied to steam railroads that operate trains for comparatively long distances, big trains as compared with yours?

The Witness: As to whether it is unfair or not, I have some very definite opinions on that. But it is the type of labor contract and labor penalties that is in effect today on the steam railroads. (207)

The Court: I mean by that whether or not taking into consideration the amount of work they do, the manner they do it, and your income and all that sort of thing, whether as a practical proposition the company could pay it, whether they would earn the money or not.

The Witness: As far as our property is concerned, absolutely not.

The Court: Suppose you apply that same sort of con-
154 tract to the Southern Pacific Company, that operates with a crew from Ogden to Winnemucca?

The Witness: The Southern Pacific are working under contracts with such penalties and restriction in, have been for some years.

The Court: Does it give occasion for one man to get two salaries in one day, as you suggested it would for a man working then you send him out to Plain City?

The Witness: The present contract in effect on the steam railroads have just such penalties in them. I assume the reason the steam railroads are able to take that burden is because of the size of the trains and the amount of revenue that is produced to them from a single operation.

But when you attempt to impose those penalties on a type of operation that has short trains, sometimes one car, two cars, with an average of eight or nine cars in all their trains, and with men whose normal day's work is entirely distinct from the work on a steam road—they haven't the responsibility of a train of from two to six or eight or ten cars; the conductor on a steam railroad has the responsibility of a train from 75 to 125 cars.

The freight and passenger division on these long transcontinental lines are so spaced as to distance that it is a day's work for a passenger crew to go from one terminal to the other

passenger terminal, or their freight crew to go from one terminal to the other terminal.

On our railroad we have got to run them back and forth
155 all around, a couple or three times, in order to get a day's work for them. It takes us by passenger train slightly under three hours to run from Ogden to Preston. (209) We work our men a round trip from Ogden to Preston and back in a day, a day's work except in instances where we operate school service on the Plain City branch, when the employee will make that trip either before or after his main line trip. The steam railroads endeavor to space their division points so that one run fits as closely as possible with their labor contracts. They have hundreds of miles of railroad in order to make that spacing. I do not know the result of the steam railroads in the matter of penalties. I do know that the question of penalties to be of tremendous moment to us. There is a substantial difference in the method of operation and in the application of such a contract to the two situations because the steam railroad has large mileage and large trains and can adjust their operation to their labor contracts. (210)

I might put it another way. The present form of penalty labor contracts has developed on the steam railroads of the United States as those railroads have developed, and no effort has ever been made to impose that type of contract upon interurban lines for the reason that they are distinctly different, they operate differently, and the requirements of their employment are different, and what is happening in this contract is an attempt to impose upon an interurban railroad labor conditions that have developed on steam railroads simultaneously with the development of those roads, and obviously the contract is impractical as to the size of our road and as to the method of our operation.

As I mention in one of these paragraphs, it would abso-
156 lutely force us out of the distinctly interurban type of business, of taking a locomotive or power unit and going out eight miles and picking up one car or two or three cars of freight, perishable freight, and bringing it in for a specific connection. It would eliminate such type of service.

It is very common to start a carload of eggs destined to the eastern market at Preston and stop the car at Logan while the same shipper adds another 100 cases and stop at Brigham and add some more, and bring it into Ogden.

You cannot furnish that type of intensive interurban service under such restrictive contracts as this. So there has developed on interurban railroads the policy of paying the men per hour for the time they work. In other words, we pay them for what they do, not for what they should have been doing. We have some crews that tie up away from their home terminal, but the size of our road brings our men home at night a very much larger percentage than on the large roads. On steam railroads practically all of them are required to maintain two homes. This is not the case on our road.

Plaintiff's Exhibit No. 42 marked for identification is a passenger time table of our railroad in force at the present time. As I have already explained there are no time tables for our freight trains; they are operated on orders. (212)

I received directions from the National Mediation Board containing the prescribed form of notice as set out in Section 2, eighth paragraph of the Labor Act and ordering us to post it. I did not comply with the order. The order was a circular addressed to all carriers subject to the Railway Labor Act and was mailed to the Utah-Idaho Central Railroad Company.

The gross operating revenue of our company for the year
157 1935 was slightly in excess of $514,000; of that amount $403,000 was freight revenue and $64,400 was passenger revenue, the balance being minor items such as express, per diem revenues, joint facility, rates, etc. As to the sources of our freight revenue, we get revenue from local people who ship locally, also from freight that is shipped in, like coal cars that are shipped in from southern Utah. (215) We have a tabulation of freight from the outside by taking a specific period with statement of carloads. Comparing our revenue for 1935 with the average revenue for the 20-year period of our operations, gross revenue 1935 was $514,000; our average gross revenue over the 20-years was $697,000, showing a decrease in 1935 of $183,000 from the 20-year average, 1916 to 1935. The period includes years of depression, up to and including last year. (216)

Now, the average revenue for passenger operation for the 20-year period was two hundred and forty-six thousand dollars.

The average passenger revenue for the twenty-year period was two hundred and seventeen thousand dollars.

The total for 1935 was sixty-four thousand dollars.

The average revenue from freight operations for the twenty year period was four hundred and four thousand dollars.

The 1935 total was four hundred and three thousand dollars, illustrating, that the freight operations of the company have produced a revenue within a thousand dollars of the average freight revenue during its entire life, or that there has been no particular change in the type of freight operation or the revenues produced from it, whereas the passenger revenue has reduced in 1935 by one hundred and fifty-three thousand dollars as against a twenty-year average, or that reduction in passenger revenue accounting for practically all of the reduction in the gross revenue compared with the twenty-year average.

158 This situation developing from the fact that the only change in the character of railroading from the time it was constructed as an interurban has not been a change of character, but a change, or a loss in revenue, due to the increased number of automobiles and the construction of hard-surface roads which has taken away from it its passenger earnings, but it still continues to do the same character of interurban freight operation for which it was originally constructed. It is only the fact of reduction in passenger revenue that has made any change in the relative proportion. There has been a reduction in the number of our passenger trains. Originally we operated a passenger train out of Ogden every two hours. They are now reduced to 8 trains and buses each way a day. In Cache Valley there is local service furnished and the reduction has not been quite as sharp, but on the whole there has been a substantial reduction in the number of passenger trains operated by reason of hard-surface highways and the increase of public ownership of automobiles.

I have made an analysis by carloads of the freight business handled by the railroads during the last 6 months period of the year 1935. (218) That is a representative period in the operations of the company. The received carloads for the 6 months period from July 1 to December 31, 1935 totalled 4,673 cars, of which 3,843 cars or 82.2 percent originated within the State of Utah and terminated at some point on our line. 830 cars or only 17.8 percent originated in states outside the State of Utah. The 4,673 cars, classified as to commodities carried show 1,476 cars carried raw materials to the processing plants located on

our line, 1,716 cars carried materials or commodities used in the processing of agricultural products at plants on our line and 288 cars carried other types of agricultural supplies
159 and products, or a total in our received business of 4,673 cars, 3,420 cars were directly tied into agricultural production or processing, 812 cars with construction materials, and 441 cars of other general commodities. (219)

Now, that is an analysis of the carloads received for that period.

The carloads forwarded for the same 6 months period total 4,020 cars. Of that 4,020, 2,400 or 59.7 percent were destined to points within the state of Utah, or in other words, were loaded on our line and delivered at points within the State of Utah.

1,620 cars of 40.3 percent, originated on points on the Utah-Idaho Central and were forwarded to points in other states.

The breaking-down into general classification of those 4,020 cars forwarded indicates that 927 cars represent raw agricultural products going to market, 1,408 cars represent raw agricultural products going to processing plants, such as sugar beets going to beet factories and milk going to the milk condenser, 910 cars represent processed agricultural products going to market, or, in other words, the sugar and the milk after it has been processed; 389 cars represent local products on our line used in processing, such as lime rock quarried on our line going into the sugar factory for use in the manufacture of sugar. The average of the trains was nine and a fraction cars. If the tonnage carried was light enough, individual trains might exceed 12 cars in length, just as some trains were much shorter. The maximum cars over the Collinston hill in one train would be 350 tons or 8 cars. If we doubled, took half up at one time and half up the next time, we could carry 16 cars. A car
160 of potatoes going to Cleveland, Ohio picked up at Brigham would be billed from Brigham City to Cleveland, Ohio, showing on the way bill the routes and junctions of other roads to which the car would move and we would deliver the car with the way bill to either the Rio Grande or the Union Pacific at the interchange. (221) The road making the final delivery would collect the money and through a system of interline accounts would report to us that they had collected the freight on this specific car and that under the divisional ar-

rangement our proportion was so much money. We keep an interline account. The money that is required of us is the money that we have collected for other roads from the consignee, less what belongs to us. (222) We keep an interline account but do not keep a separate balance. It usually requires $35,000 or $40,000 to make our settlements. We keep it in the same account with our other funds, but of course we do not spend it because it does not belong to us.

Cross Examination

I have given carload figures relative to traffic conditions on our road for the last half of 1935. (223) I have not the figures for the whole year of 1935 worked up on this basis. We took the 6 months period as representative. The reason I worked up the last half-year of 1935 was that in that hearing before the Interstate Commerce Commission, it was indicated that the last six-months period of the latest year was a sufficient analysis of the traffic to serve their purpose. I can obtain the figures for the whole year 1934 as to the revenue received from passenger service compared with freight service for the same yar if desired.

I can give the figures for the last half of 1935 showing
161 the number of cars interchanged with other lines as compared with those which originated and also terminated their movement upon our line. Those figures are for carloads forwarded, out of a total of 4,020 cars, 2,336 were locally forwarded, (224) that is, originated on our line and were forwarded to stations on our line, the balance of 1,684 were interchanged with our various steam and electric line connections. As to cars received, out of a total of 4,673, 2,336 were loaded and destined at and to points on our line and 2,337 or just over half were received from our steam and electric line connections. I do not have similar figures so divided for less-than-carload traffic. Our company is a party to through freight tariffs by which we can forward shipments to or receive them from practically all parts of the United States. We use freight cars which belong to the steam railroad lines. Most of the interchanged freight traffic from our line is in cars of road which are general steam line roads. (225)

On redirect examination by the Court:

We have 173 freight cars. Of these 75 are not interchangeable, that is, they are of such construction or condition that

we cannot load them to a steam railroad. There are 98 of them that are steam dump cars or gondola cars, which we purchased to haul beets during times of the year other than the beet season. If there is an equipment shortage we try to get those cars in what we call the coal service, in the service from the coal mines to other destinations. The only time, we ourselves load them to other lines is when they are loaded with lime rock going to sugar factories not located on our line. That is the only commodity we originate in our territory that is adaptable to that type of car.

(Plaintiff's counsel presented plaintiff's Exhibit No.
162 43 headed "Statements of Interstate Commerce Commission concerning electric railways which are contained in various annual reports from 1921 to 1935, inclusive") and offered same in evidence. It was objected to by counsel for both defendants on the ground that it is irrevelant and immaterial, (230) whereupon said objection was overruled by the Court to which defendants' counsel then and there accepted. A copy of said Exhibit No. 43 is hereto attached, consisting of 12 sheets marked 43a, b, c, etc.

Plaintiff next offered in evidence and caused to be marked plaintiff's Exhibit No. 44 a paper purporting to be a statement issued by the Interstate Commerce Commission through its Bureau of Statistics, covering statistics with regard to electric railways for the year ended December 31, 1934. It is statement No. 3576, dated Washington, D. C., August, 1935. Said paper was objected to by counsel for the intervening defendant upon the ground that it purported to be a part of the records of the Interstate Commerce Commission, but did not appear to have been certified by the Commission as an official copy.

The Court: If any point about it I will let counsel be sworn and testify, like you prove a foreign law—if a man knows about it he can swear to it.

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Whereupon C. D. Cass, counsel for plaintiff, was called as a witness by and on behalf of the plaintiff, and having been duly sworn testified:

Exhibit No. 44 is composed of numbered sheets from 1
163 to 49 (233) except that the outside sheet is designated as one, the first inside sheet as 1-a and the second sheet

1-b. This report of the Bureau of Statistics, statement No. 3576, dated Washington, D. C. August, 1935 is a correct copy of the report issued by the Commission with regard to electric railways for the year ended December 31, 1934 and this particular document was obtained from the Commission's files itself. It is selected statistics taken from the reports of the electric railways filed with the Commission and the selection was made by the Commission.

On cross examination the witness testified: Exhibit No. 44 is a copy made by the Commission from the Commission's own issuance of that particular document. (234) I procured it from the Commission. I sent down to the Commission after it. One of my office organization went down to the Commission and obtained this document. That is the extent of my knowledge as to its coming from the Commission. Other that it is the same report that is put out year after year by the Commission.

Mr. Thomas: If the Court please I submit the statement of this witness is not sufficient.

The Court: The objection will be overruled. I don't care about argument. Just make your objection.

Mr. Thomas: If the Court please we object to that on the ground, in the first place, that it has not been authenticated, and second, that it is not competent to prove a copy of the records of the Commission except by a certificate of the custodian of those records, namely, the secretary of the Commission. (236)

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Nelson Thomas, Attorney for intervening defendant,
164 Interstate Commerce Commission was thereupon called as a witness by and on behalf of the plaintiff and having been first duly sworn testified in substance as follows:

I am not familiar with the reports that the Commission issues, annual statistical reports, in the sense that I know everything about them. I have seen reports of the Commission embodying data which seemed to be similar to that which is set out in plaintiff's Exhibit No. 44. I have not formed a conclusion or expressed any conclusion as to whether or not said exhibit looks as if it might have been changed or altered or made from a different source, or that it does not look natural. I have

simply stated that I don't know that said exhibit is an official report.

The Court: The document will be received subject to investigation by counsel to determine its genuineness and if you discover anything different we will substitute. Whereupon plaintiff's Exhibit No. 44 was received in evidence, a copy of which is hereto attached. (240).

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Plaintiff then offered in evidence a photostatic copy of a letter from M. O. Lorenz, Director of Statistics for the Interstate Commerce Commission and a mimeographed copy of letter from C. D. Cass, same being marked plaintiff's Exhibit No. 45. Objected to by defendants as irrevelant and immaterial. Said exhibit was admitted in evidence and a copy of the same is hereto attached.

Counsel for plaintiff presented and offered in evidence as Exhibit No. 46 by reference certain portions of a book marked "Special Reports of the Census Office; Street and Electric Railways 1902, Department of Commerce and Labor" published under authority of an Act of Congress, the portions
165 thereof being Part 1, Chapter 1, pages 3 to 5, Part 1, Chapter 7, pages 101 to 119 inclusive, Part 2, Chapter 4, pages 214 to 217 inclusive. Whereupon said exhibit was objected to by defendant on the ground that it was irrevelant and immaterial. Whereupon the court overruled said objection and admitted said exhibit in evidence.

Counsel for plaintiff offered in evidence and caused to be marked plaintiff's Exhibit No. 47 a document entitled "Special Reports of the Bureau of Census; Street and Electric Railways, 1907, Department of Commerce and Labor" published by authority of an Act of Congress. Counsel stated that they would like to have incorporated in the record by reference the following parts of said document. Part 1, Chapter 4, pages 56, 57 and 58 under the heading "Track on private right of way." Part 1, Chapter 4, page 64 under the heading "Express Freight, and mail cars." Part 1, Chapter 5, pages 92 and 93 under the heading "Mail, express, and freight business." Part 2, Chapter 4, pages 265 to 290. Whereupon counsel for defendants objected to said exhibit on the ground that it was irrevelant and immaterial, which objection was overruled by the court and said exhibit admitted in evidence. (244)

Whereupon plaintiff offered in evidence as plaintiff's Exhibit No. 48, a paper entitled "Central Electric Light and Power Stations and Street and Electric Railways, 1912, Bureau of the Census, Department of Commerce", and asked to incorporate in the record by reference the following parts of said document:

Part 1, Chapter 1, pages 179 to 181, inclusive.

166 Part 1, Chapter 4, page 208, under the heading:

"Track on private rights of way,"

Part 1, Chapter 4, pages 208 and 209, under heading:

"City and suburban and interurban lines."

Part 1, chapter 4, page 209 under heading:

"Rolling Stock."

Part 1, chapter 4, page 210 under heading:

"Electric locomotives."

Part 1, Chapter 5, page 222, under heading:

"Freight, mail, and express business."

Part 1, Chapter 7, pages 240 to 242, inclusive, under heading:

"Operating Revenues and Miscellaneous Income."

Under the heading of general tables—"Table 153," pages 282 to 287, inclusive, showing "Track Mileage."

Table 154, pages 288 and 289 under the heading of:

"Rolling Stock."

Table 161, pages 308 to 340, inclusive, under the heading:

"Operating Revenues".

Said exhibit was objected to by counsel of defendants on the ground that it is irrevelant and immaterial, which objection was overruled by the court and said exhibit admitted in evidence.

Plaintiff's counsel then stated "I want to offer in evidence certain portions of the hearings before the committee on Interstate and Foreign Commerce of the House of Representatives of the 69th Congress, the first session of H. B. 7180 at page 9,

which was the bill which resulted in the Railway Labor Act of 1926. (246)

The court announced that it would take judicial notice of hearing before Congress (247)

Plaintiff's counsel then asked the court to take judicial
167 notice of the hearing before the Senate Committee on Interstate and Foreign Commerce of the 73rd Congress, the Second Session of Senate Bill No. 3266; also to the hearings before the Sub-Committee of the Interstate Commerce Committee of the United States Senate of the 72nd Congress, Second Session in consideration of S. 3892 and S. 4646, which were the bills providing for pensions and retirements for employees of interstate railways and which subsequently became the Railway Retirement Act.

Said evidence was objected to by defendant's counsel as irrevelant and unnecessarily encumbering the record.

The court said: "It is not in the record except that he is calling the court's attention to it. I will take judicial notice of it if you [plaintiff's counsel] will get it before me."

Mr. Thomas: Permit us, if the court please, to preserve the record by renewing our objection to all the testimony just given as having no bearing upon and immaterial to the issues properly before the court.

Mr. Matherson: May the defendant join in that.

The Court: You move to strike it out.

Mr. Matherson. The motion will be to strike.

The Court: The motion will be denied.

Whereupon the plaintiff rested.

On behalf of both defendants' counsel offered in evidence as defendants' Exhibit A a certified copy of the report of the Interstate Commerce Commission dated February 27,
168 1936 in Labor Act, Docket 12, dealing with the classification of the Utah-Idaho Central Railroad Company under the United States Labor Act.

The Court: Any objection to it?

Mr. Howell: We make the objection that it is incompetent, irrevelant and immaterial to any of the issues in this case.

The Court: The objection will be overruled.

Whereupon defendant's exhibit A was admitted in evidence, a copy thereof is attached hereto.

In rebuttal plaintiff offered in evidence its Exhibit No. 49 consisting of oral testimony and exhibits introduced before the Interstate Commerce Commission upon hearing before a Commission examiner in Docket 12, Railway Labor Act, Utah-Idaho Central Railroad Company which exhibit was admitted in evidence by the court. A condensed copy of which is hereto attached.

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Whereupon the following proceedings occcurred.

The Court: I will say to you gentlemen the findings in this case are quite simple questions of law that may or may not be difficult.

I will find as the fact in this case, both from the evidence introduced and also from the record submitted before the Commission, that this railroad, this line of the plaintiff company here, is a line of railroad operated by electric power; second, that it is known as, and in fact is, an interurban electric railway which is not now and never has been operated as a part of a general steam railroad system of transportation.

Now, if I make those findings, are you entitled to judgment?

Mr. Howell: Yes, I would say we are, if your Honor please.

Mr. Cass. I don't see how you could decide otherwise.

The Court: I cannot find anything else. That is
169 clearly what the record shows—both records. It is only a question of conclusion of law whether or not from those findings you are entitled to a judgment as prayed.

Mr. Cass: Seems to me upon those findings we must have an injunction to prevent the irreparable damage which has been shown.

Mr. Thomas. I submit, if the court please, the question here is whether or not the railroad comes within the terms of the proviso.

The Court: I have found that it is a line of railroad, that it is an electric interurban railroad line, and that it is not any part of any general steam railroad.

Now, I will also find, if necessary to include all the proviso, that it is not a railroad line that is operated by any other motive power than electricity.

Now, they are the only items in the proviso.

If you people want to think it over from that standpoint of those findings until morning. I will stay here with you and talk to you tomorrow morning about it.

Mr. Howell: You mean the question as to whether or not we are entitled to judgment?

The Court: Or the other side, either.

I don't see how I can avoid making those findings upon the evidence, irrespective of which record you take, either the record made before me or the one made before the Commission. Unquestionably that is what they show.

Mr. Cass: If the court please, if I may make an obser-
170 vation which merely comes to me off-hand, on those findings of fact this plaintiff, if a prosecution was attempted could point to those findings of fact and escape all liability, I should think. Because if it is an interurban railroad it is not subject to this Act.

The Court: Unless it is part of a general steam—

Mr. Cass: But the findings says it is not that.

The Court: You seem to be more jovial about it than the other side.

If you men want to sleep on it—

Mr. Howell: More what?

The Court: More pleasant about these findings than the other side.

Mr. Howell. I think they are right.

The Court: The other side thinks they are wrong, probably.

I am perfectly willing to have you discuss them now; don't want to have to discuss them any other time. And if on those findings it seems to be evident that the judgment should go for the plaintiff, there is not any use in staying here and talking about it.

Mr. Thomas: If the court please, your Honor has made findings which do not include the statutory finding imposed upon the Commission.

The Court: What I am concerned with is whether or not these findings are sufficient to carry a judgment—support a judgment—either one way or the other, because the proviso is for the Commission and also for this court in some way or other to determine whether or not any line operated by electric power falls within the terms of this proviso, and all the
171 terms we are concerned with are the terms of the proviso.

Mr. Howell: With respect to which your Honor has found

The Court: When I find what the terms are, affirmative or negative, that is the end of it.

Mr. Cass: If the court, please, the prayer in the pleadings is simply for an injunction to prevent prosecution. It involves nothing so far as the government is concerned. It simply creates a standstill until they can take this matter forward.

The Court: It stops the district attorney from prosecuting under the penalty clause of this Act.

Mr. Cass. It debars the government of no rights. It is merely a standstill order until they can find out if somebody else has a different opinion than this court.

The Court: Of course, I may be wrong about it. Of course, anybody has the right to appeal.

Mr. Cass: We don't think you are wrong. We think you are right.

Mr. Thomas: Our position is, unless this court can find that the Interstate Commerce Commission lacked authority, failed to give a due hearing, or acted without any evidence to support it, that its findings cannot be contradicted by the court.

The Court: I am going to give you the leeway on that. I am not going to go outside of the terms of this record to make any negative finding one way or the other.

Mr. Thomas: I am not asking a finding. I am just stating our position, if the court please.

The Court: You wouldn't want me to make a finding, I might make it against you.

But I will leave that out, so you can have the advantage of the absence of it. (276)

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The above and foregoing, together with Volume II con-
172 taining plaintiff's Exhibit 1-49, inclusive, and defend-
ant's Exhibit A, is all of the evidence introduced and proceedings had at the trial of the said cause which are necessary for review of the rulings assigned as error on this appeal.

Wherefore, Dan B. Shields, individually and as United States Attorney for the District of Utah, defendant appellant, and the Interstate Commerce Commission, intervening defendant appellant, pray that the above statement of evidence be settled, approved and allowed by the above entitled court as a true, full, correct, and complete statement of all the evidence
necessary for review of the ruling assigned as error on
173 this appeal taken and had on trial of said cause for use on the appeal taken to the United States Circuit Court of Appeals for the Tenth Circuit.

LEO F. TIERNEY,
Special Assistant to the Attorney General.

SCOTT M. MATHESON,
Assistant United States Attorney.
Attorneys for the defendant, Dan B. Shields.

DANIEL W. KNOWLTON,
Chief Counsel, Interstate Commerce Commission.

NELSON THOMAS,
Assistant Chief Counsel, Interstate Commerce Commission.
Attorneys for the Interstate Commerce Commission.

The complainant in the above entitled cause hereby waives notice of lodgment of the foregoing statement of evidence including Volume II thereof with the clerk of the above entitled court and agrees that the foregoing statement of evidence and

the exhibits as above set out is true and correct and the court is respectfully requested to approve the same.

J. H. DeVINE,
J. A. HOWELL,
DAVID L. STINE,
C. D. CASS,
ROBERT E. QUIRK,
Attorneys for the complainant.

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The foregoing statement of evidence together with Vol-
174 ume II above referred to is in all respects hereby approved and settled as the true and complete statement of the evidence adduced on the trial of the above entitled cause.

Dated this 17th day of February, 1937.

TILLMAN D. JOHNSON, Judge of the United States District Court for the District of Utah.

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Filed in United States District Court, District of Utah Feb 17—1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy.

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Stipulation, February 16, 1937

175 It is hereby stipulated by and between the plaintiff and the defendant and intervening defendant, by and through their respective counsel, that three photostatic copies of each of the Exhibits 1, 12, 14, 22, 23, 24, 25, that portion of Exhibits 49 consisting of Exhibit 26, as introduced before the Interstate Commerce Commission in Railway Docket No. 12, and Exhibit 28, sheets numbered 1 and 2, may be filed with the Clerk of the United States Circuit Court of Appeals for the Tenth Circuit as the equivalent of the originals so numbered.

It is further stipulated that Plaintiff's Exhibit No. 32 need not be printed.

Dated February 16, 1937.

J. H. DeVINE,
J. A. HOWELL,
DAVID L. STINE,
Attorneys for Plaintiff.

SCOTT M. MATHESON, Assistant United States Attorney,
Attorney for defendant.

NELSON THOMAS, Attorney for Intervening Defendant.

Filed in United States District Court, District of Utah February 16, 1937, W. B. Wilson, Clerk, By V. P. Ahlstrom, Deputy.

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Stipulation Waiving Bond on Appeal

It is stipulated by and between the plaintiff and the defendant and the intervening defendant in the above entitled action, by and through their respective counsel, that the giving and filing of a bond upon appeal in the above entitled
176 matter be and the same is hereby waived.

Dated: February 16, 1937.

J. H. DeVINE,
J. A. HOWELL,
DAVID L. STINE,
Attorneys for Plaintiff.

SCOTT M. MATHESON, Assistant United States Attorney.
Attorney for Defendant.

NELSON THOMAS, Attorney for Intervening Defendant.

Filed in United States District Court, District of Utah Feb —16, 1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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Order

177 Good cause appearing therefor, and on motion of Scott M. Matheson, Assistant United States Attorney for the District of Utah,

It Is Hereby Ordered, that the defendant herein, Dan B. Shields, shall have to and including March 27, 1937, within which to docket his appeal in the United States Circuit Court of Appeals for the Tenth Circuit in the above entitled case.

Dated at Salt Lake City, Utah, this 17 day of February, A. D. 1937.

TILLMAN D. JOHNSON, Judge.

Filed in United States District Court, District of Utah Feb 17 1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy

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## Praecipe

178 Comes now Dan B. Shields, individually and as United States Attorney for the District of Utah, by Scott M. Matheson, Assistant United States Attorney for said District, and the Interstate Commerce Commission, by Nelson Thomas, Attorney for said Intervening Defendant, and directs the Clerk of this court to certify a transcript of the record in the above cause to the United States Circuit Court of Appeals for the Tenth Circuit by including therein the following:

1. Bill of complaint for Injunction and Petition for Declaratory Judgment.
2. Order to Show Cause upon Application for Temporary Injunction and setting same for hearing.
3. Minute Entry of June 27, 1936.
4. Return to Rule to Show Cause.
5. Motion to Dismiss Bill of Complaint.
6. Affidavit of Service of Return to Rule to Show Cause and Motion to Dismiss Bill of Complaint.
7. Minute Entry of August 29, 1936.
8. Amended Bill of Complaint for Injunction and Petition for Declaratory Judgment.
9. Amendment to Amended Bill of Complaint for Injunction and Petition for Declaratory Judgment.
10. Answer of defendant Dan B. Shields.
11. Affidavit of Service of Answer of Dan B. Shields.
12. Minute Entry of September 16, 1936.
13. Minute Entry of September 26, 1936.
14. Petition of Interstate Commerce Commission for leave to Intervene as Party Defendant.
15. Order granting leave to Interstate Commerce Commission to Intervene as Party Defendant.
16. Answer of Interstate Commerce Commission.
17. Reply of Plaintiff to Answer of Defendant.

18. Answer and Reply to Answer of Interstate Commerce Commission, Intervening Defendant.

19. Stipulation of October 12, 1936.

20. Minute Entry of October 12, 1936.

21. Minute Entry of October 13, 1936.

22. Minute Entry of October 14, 1936.

179 23. Minute Entry of October 15, 1936.

24. Findings of Fact, Conclusions of Law.

25. Decree

26. Order of November 23, 1936

27. Order of December 21, 1936

28. Petition for Appeal

29. Order Allowing Appeal

30. Assignment of Errors.

31. Citation on Appeal

32. Affidavit of Service of Petition for Appeal, Order Allowing Appeal, Assignment of Errors and Citation on Appeal.

33. Order of January 29, 1937

34. Order of February 13, 1937.

35. State of Evidence in accordance with Equity Rule 75; Volume I, Transcript of the Testimony, and Volume II, Plaintiff's Exhibits 1-49, inclusive and Defendant's Exhibit A.

36. Stipulation of February 16, 1937, waiving bond on Appeal.

37. Stipulation of February 16, 1937, designating Exhibits which may be reproduced but not printed.

38. Order of February 17, 1937.

39. This Praecipe.

40. Affidavit of Service.

41. Clerk's Certificate.

Dated at Salt Lake City, Utah, this 17th day of February, A. D. 1937.

SCOTT M. MATHESON, Assistant United States Attorney.
Attorney for Defendant Dan B. Shields.

NELSON THOMAS, Assistant Chief Counsel, Interstate Commerce Commission.
Attorney for Intervening Defendant.

Filed in United States District Court, District of Utah Feb 17—1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy.

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Affidavit of Service

The United States of America, District of Utah, Central Division. ss.

WINNIE ESTERAK, being first duly sworn upon her oath, deposes and says:

That she is a Clerk in the office of the United States At-
180 torney for the District of Utah; that on February 17, 1937, she served The Utah Idaho Central Railroad Company, a corporation, Complainant in the above entitled cause, with Praecipe by placing a true copy of said Praecipe in a franked envelope of the United States addressed as follows, to wit:

Messrs. DeVine, Howell & Stine,
Attorneys at Law,
Eccles Building,
Ogden, Utah,

and deposited the said envelope in the United States Post Office at Salt Lake City, Utah, for mailing and delivery to Counsel for said Complainant, Utah Idaho Central Railroad Company.

(Seal) WINNIE ESTERAK.

Subscribed and sworn to before me this 17th day of February, A. D. 1937. W. B. Wilson, Clerk U. S. District Court, For the District of Utah By V. P. Ahlstrom, Deputy.

Filed in United States District Court, District of Utah Feb 17—1937 W. B. Wilson, Clerk By V. P. Ahlstrom, Deputy.

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## Certificate of Clerk

United States of America, District of Utah. ss.

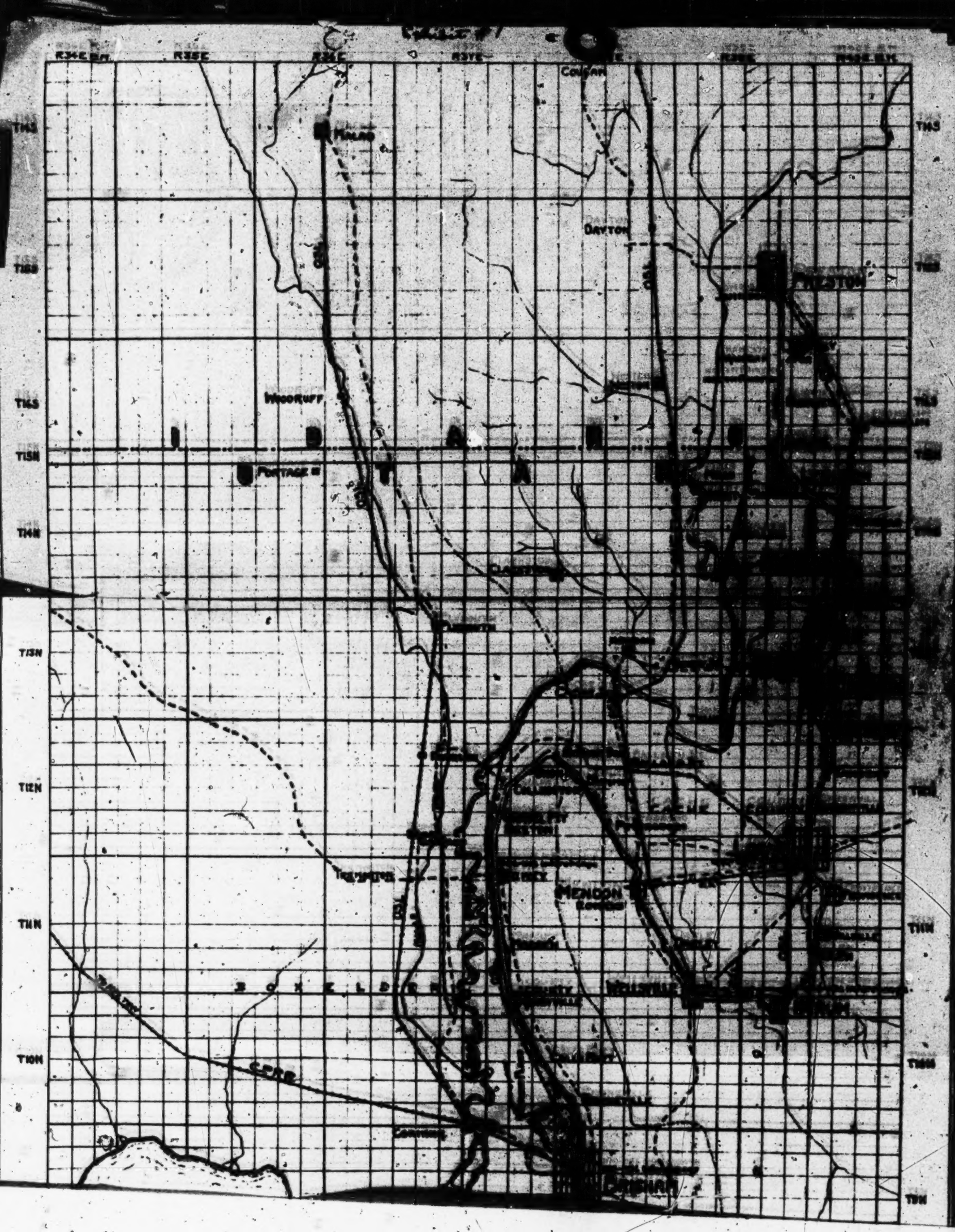
I, W. B. Wilson, Clerk of the United States District Court for the District of Utah, do hereby certify that the foregoing pages numbered from one to 668 contains a full, true, correct and complete copy of the original record and proceedings designated in the praecipe for a transcript of the record in the cause numbered 12924, Equity, wherein The Utah Idaho Central Railroad Company, a corporation, is Plaintiff, and Dan B. Shields, individually and as United States Attorney for the District of Utah, is Defendant, and Interstate Commerce Commission is the Intervening Defendant, now remaining among the records of the said Court in my office.

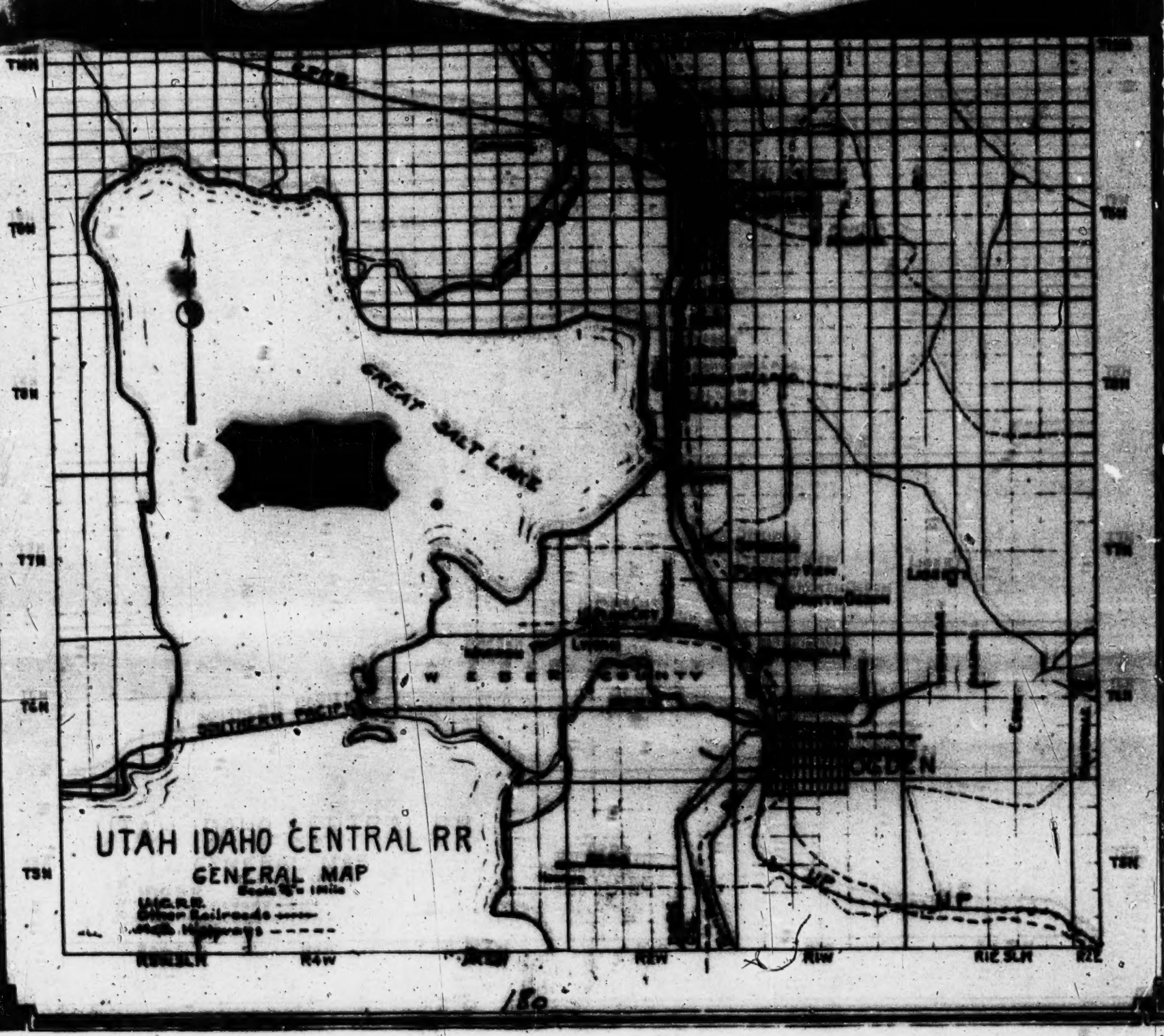
I further certify that the original Citation on Appeal, and original order Extending time to docket appeal, in this cause is hereunto annexed and transmitted herewith.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Salt Lake City, Utah, this 23rd day of April, A. D. 1937, and the 161st year of the Independence of the United States of America

(Seal) W. B. WILSON, Clerk.

Filed April 26, 1937. Albert Trego, Clerk.


R34E
R35E
R36E
R37E
R38E
R39E
T14S
T13S
T12S
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T9N
T8N
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T6N
T5N
T4N
T3N
Cougar
Milan
Dayton
Preston
Moorcroft
Portage
Menan
Rexburg
Idaho Falls
Ucon
Iona
Ririe
Swan Valley
Irwin
Victor
Driggs
Tetonia
Teton
Teton Pass
Teton Creek
Teton River
Canyon
Ashton
Chester
Parker
Lamont
Dubois
Spencer
Leadore
Salmon
Tendoy
Lemhi
Gilmore
Patterson
Howe
Arco
Mackay
Challis
Clayton
Stanley
Sun Valley
Ketchum
Hailey
Bellevue
Carey
Picabo
Richfield
Gannett
Bennett Hills
Fairfield
Shoshone
Gooding
Wendell
Hagerman
Bliss
Twin Falls
Jerome
Rupert
Burley
Malta
Albion
Oakley
Almo
Elba
Declo
Raft River
Malad
Samaria
Downey
Arimo
Inkom
Pocatello
Chubbuck
Lava Hot Springs
Soda Springs
Grace
Thatcher
Bancroft
Oxford
Weston
Clifton
Dayton
Preston
Franklin
Whitney
Fish Haven
Montpelier
Bloomington
Georgetown
Bern
Paris
Bennington
Geneva
Nounan
Fairview
Liberty
Wardboro
Ovid
Sage Junction
Victor
Driggs
Tetonia
Teton
Teton Pass
Teton Creek
Teton River
Canyon
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Franklin
Whitney
Fish Haven
Montpelier
Bloomington
Georgetown
Bern
Paris
Bennington
Geneva
Nounan
Fairview
Liberty
Wardboro
Ovid
Sage Junction


GREAT SALT LAKE
OGDEN
UTAH IDAHO CENTRAL RR
GENERAL MAP
U.I.C.R.R.
Other Railroads
R4W
R1W
R1E SLM

## Exhibit 2 (Abstracted)

181 The Utah Idaho Central Railroad has franchises to use the streets and highways of the following communities: City of Lewiston, City of Richmond, City of Smithfield, Town of Hyde Park, Logan City, Cache County, Town of Providence, Town of Millville, City of Hyrum, City of Wellsville, City of Mendon, Brigham City, Town of Perry, City of Willard, Ogden City, Box Elder County and Weber County, all in Utah, and City of Preston and Franklin County in Idaho. All of these franchises authorize the construction and operation of a "railroad" or "railway", but require either that the motive power of the carrier be electricity or that it not be steam. The following communities (but not the others named above) authorize the carrier to operate only "street and interurban" or "interurban" or "street" railways: City of Lewiston, Cache County, Mendon City, Town of Perry, Willard City, Ogden City, City of Preston and Franklin County.

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## Exhibit No. 3

### Historical Sketch of The Utah Idaho Central Railroad Company and its Predecessor Corporations.

317 The Present Utah Idaho Central Railroad Company is the result of the combination and extension of several small street car and interurban properties.

It had its inception in Ogden, Utah about 1890 from a street car system, approximately three or four miles long upon which was operated some horse drawn cars. This Company eventually became insolvent and when liquidated its assets were purchased by a group of Northern Utah citizens headed by the late David Eccles, who organized a corporation under the laws of Utah which was known as the Ogden Rapid Transit Company. This change took place in the late nineties and thereafter marked the beginning of the rehabilitation, electrification and further expansion of the properties which are known today as the Utah Rapid Transit Company located within the corporate limits of Ogden City and The Utah Idaho Central Railroad Company, the interurban line in question.

Sometime in the late nineties a corporation was formed under the name of the Ogden and Northwestern Railroad Company which built a small interurban line of railroad from the North

City limits of Ogden along the country roads to Hot Springs in Box Elder County and operated thereon for passenger and some freight business. Their initial power being furnished by a small steam locomotive.

The rails of this new Company connected at the North City limits of Ogden with the rails of the Ogden Rapid Transit Company on Washington Avenue. The two companies jointly handling interurban traffic.

Subsequently the same interests who owned or held control of the Ogden Rapid Transit Company acquired the ownership of the Ogden and Northwestern Railroad Company and from that time on operated common equipment over both properties.

Approximately in the year 1910 the Ogden Rapid Transit Company as a corporation acquired the property of the Ogden and Northwestern Company and equipped the latter Company for an electric interurban operation and also, extended the line along the public highway from Ogden Hot Springs to Brigham City, Utah, which is located twenty-one miles north of Ogden, operating electrically over the entire line for the transportation of passengers and freight.

Contemporaneously with this development between Og-
318 den and Brigham City, practically the same people who owned the Ogden Rapid Transit Company built a line of street and interurban railway in the City of Logan, Cache County, Utah, extending same northward through Hyde Park to Smithfield, Utah, a distance of about eight miles and south through Providence, Millville and Hyrum to Wellsville, Utah, a distance of approximately twelve miles, operating over this interurban by means of electrical power and handling passenger and freight business. The freight business being largely agricultural products produced in the vicinity of their line of railroad.

About the month of May 1914 the Ogden Rapid Transit Company operating in Ogden City and from Ogden, Utah to Brigham, Utah and the Logan Rapid Transit Company operating in the Logan City and between Wellsville, Utah and Smithfield, Utah were consolidated into a single corporation under the laws of the State of Utah known as the Ogden, Logan and Idaho Railway Company.

This corporation for a time thereafter operated all of the properties formerly owned and controlled by the Ogden Rapid

Transit Company and the Logan Rapid Transit Company, and also, commencing about the time of the consolidation rebuilt a portion of the line extending from Ogden northward through Brigham City and constructed a new line from Brigham City north over the Collinston Divide into Cache Valley connecting with the southern terminus of the Logan Rapid Transit Company. Also, extending the northern terminus from Smithfield, Utah to Lewiston, Utah a distance of eleven miles, and eventually crossing the state line to Preston, Idaho, which lies approximately six miles north of the Utah State Line.

The Ogden, Logan and Idaho Railway Company continued thereafter to operate the street car system in the City of Ogden, the street car system in the City of Logan, and also the interurban line which had been developed out of the interurban properties of the Ogden Rapid Transit Company and the Logan Rapid Transit Company continuing to carry on the same general character of business of transporting both passengers and freight with electric cars.

In the latter part of 1919 it seemed desirable to segregate the interurban operations of the Company from the purely local street car operations in the City of Ogden and the suburban operations extending east from Ogden City into Ogden Canyon. Accordingly, a new corporation was formed known as the Utah Rapid Transit Company which took over and operated the local street car system in Ogden, Utah and the suburban line running east from Ogden into Ogden Canyon. The ownership and operation of the interurban railroad from Ogden, Utah to Preston, Idaho remaining with the Ogden, Logan and Idaho Railway Company which had changed its name to Utah Idaho Central Railroad Company.

Utah Idaho Central Railroad Company, a Utah cor-
319 poration continued to operate these interurban lines until the latter part of the year 1926 when a corporate reorganization took place and the properties were then continued under the ownership and operation of The Utah Idaho Central Railroad Company, a Delaware Corporation which is the present owner and operating company.

Throughout all of these developments of this interurban property through the various companies previously named the personnel of its employees and owners has to a very large extent remained that of the original street car and interurban

companies, namely the Ogden Rapid Transit Company and the Logan Rapid Transit Company.

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## Exhibit No. 4

### Description of the Purpose and Method of Operations of The Utah Idaho Central Railroad Company.

320 As indicated in the history of the Corporate development of The Utah Idaho Central Railroad Company the property as now exists was practically completed in the latter part of the year 1915 and represents as previously explained the joining together of individual small interurban railroads previously constructed in Cache Valley and in Weber and Box Elder Counties.

These roads were practically entirely financed by local citizens in the Northern Utah area who were collectively interested in the various agricultural and agricultural manufacturing pursuits which are common to this section, such as dairying and milk processing; sugar beet raising and sugar manufacturing; canning; livestock; poultry; fruits; vegetables, etc.

These people were naturally also interested in the economic, cultural and educational development of the various small communities which are now contiguous to this interurban railroad. Their idea in the construction of the constituent properties and in the later joining together of these properties into one line was to furnish an easy convenient method of intercourse between those communities and also, to furnish a method of transporting the raw products grown in the area to the agricultural processing and manufacturing plants which they developed within the area.

This requirement could be best and most satisfactorily served by the construction of an interurban electric line with its consequent frequent and rapid passenger service and its natural ability, by reason of its type, to provide a convenient and economical method of moving raw products at frequent intervals, and over short distances to the processing plants.

This type of service was and is distinctly within the physical scope of an interurban railroad in that as will be later shown, its entire physical construction was designed to accommodate small trains, rapidly moving, at frequent intervals, and it is a

character of service not possible of being furnished by the ordinary steam railroad, in that a major requirement of steam railroad operation is long trains and a service largely influenced as to schedule by the availability of sufficient tonnage to approximate the rating of the power used. The continual development in steam transportation of larger power with its consequent longer trains and longer intervals between those trains creates a physical condition which can not be adapted to the type of service performed by an interurban railroad.

To illustrate this point, such services as the following
321 have been performed by The Utah Idaho Central Railroad Company. The handling of raw milk from concentration points to condenseries. This service must be performed with a minimum of time enroute and a definite arriving time at the condensery to fit in with their daily evaporation program. This movement is generally accomplished with the power unit and one car and usually entails special service.

This Company has also performed a service of moving shelled peas from vineries to canning factories. In the canning of peas it is necessary in order to preserve their natural flavor that a minimum amount of time be consumed from the field to the cannery, peas being harvested in the fields, taken to the vinery for shelling, and moving in lug boxes rapidly into the cannery before either time or temperature can start the change in flavor. This movement likewise was accomplished with one or two car trains and special service.

Another typical interurban movement is the handling of ripe tomatoes in stock cars for movement into the canning factory, usually with special service.

Large quantities of beets are handled from various loading stations in small trains to the sugar factories for processing.

These are only typical of the type of service performed and generally represent the transportation link of the industrial development contemplated as a unit by the same people who constructed the processing plants at the same time they constructed this interurban railroad.

Later on in the presentation an exhibit will be introduced showing the number of trains operated daily on this property which in itself will present a more concrete picture of the frequency of service actually used in the operation of the property.

Likewise there will be presented exhibits showing the large number of sidings and spurs available for the loading of raw products and one showing the frequency of available passenger stops for the convenience of short distance interurban travel.

The Company at the present time in addition to the operation of numerous small freight trains operates both one and two car interurban passenger trains and gasoline motor busses.

A distinctive feature in our interurban passenger operation which tends to illustrate the type of service furnished the communities involved is the transportation of school children. The providing of educational facilities in this section is through the location of high schools at central points rather than in each community and in the carrying out of this policy, at public expense students are brought from their home to these centrally located schools.

Our interurban operation fits well into this plan in that
322 very large numbers of these students are transported by this interurban service at a small cost from their homes to these central schools as will be shown in a later exhibit. This travel amounts to from 175,000 to 210,000 passengers per year and is largely accomplished through the operation of short distance special school trains.

The Company operates both an interurban bus service generally paralleling its line of railroad and a local bus service serving the Utah State Agricultural College at Logan.

For many years Pick-up and Delivery service has been rendered at all available points in connection with package freight. A daily package merchandise train is operated making a round trip from Preston, Idaho and return during the night hours.

This train is powered by an interurban electric car constructed so as to make a large portion of the car available for the handling of package freight. Each car also, being equipped with refrigeration facilities for the handling of perishable commodities in summer weather and with heating facilities for their handling during the winter weather. The locomotive unit on this train is likewise sufficiently powered to permit the hauling of other cars of package freight.

As will be shown in a later exhibit a substantial portion of the mileage of the property lies on city streets and county roads. In the cities and towns of Mendon, Wellsville, Logan, Hyde Park, Smithfield, Richmond, Lewiston, and Preston, the

main line runs on the principal business street. In the City of Ogden it comes within one block of the heart of the business district and in the other communities through which the Company operates their main line is on public streets in very close proximity to the principal business section.

As has been shown in the previous exhibit the right to occupy these city streets and to operate through these business districts is limited to an electric interurban operation which in itself is a legal barrier against the operation of long freight trains or an operation of the same general character as that of so called steam railroads.

Exhibit 5 (Abstracted)

323 The Utah Idaho Central Railroad owns and operates in freight service the following freight hauling units:

Five electric locomotives, Nos. 901 to 905, inclusive. These are what are commonly known as fifty-ton locomotives. Their maximum hauling capacity on any portion of the railroad in either direction is 1,000 tons or approximately 22.2 cars, half loads and half empties. On many parts of the main line these locomotives are unable to handle more than 230 tons, or approximately 5 cars, half loads and half empties.

These locomotives, therefore, are capable of handling over the main line of the railroad, depending upon the grades of the various sections of the line, from 230 tons or 5 cars, trailing load, to 1,000 tons or 22.2 cars, trailing load.

Freight cars are sometimes handled by what is known as "500 Class Passenger Motors". The freight car hauling capacity of these passenger motors is a maximum of 175 tons, trailing load, over part of the line and a maximum of 90 tons, trailing load, over other parts of the line. These 500 Class Passenger cars, therefore, are capable of handling over the main line of the railroad from 90 tons trailing load, to 175 tons trailing load, depending upon the grade over which the movement is made.

In addition to the foregoing, there are freight hauling units Nos. 505, 510, 801, 951 and 952. Three of these five freight hauling units were built in the company shops. Two of them are converted passenger cars changed over for freight hauling purposes by the changing of the gear ratios. The capacity of these five freight hauling units, for handling freight trains over the main line of the railroad, is the same as the capacity of the "500 Class Passenger Motors" set out in the above paragraph.

(Plaintiff's Exhibit No. 6, offered and received in evidence, is in words and figures as follows:)

"List of Equipment Owned by the Utah Idaho Central Railroad Company
Showing Whether Interchanged With Steam Railroads

| No. of Units | Class | M. C. B. Designation | Description | Interchangeable with Steam Railroads | Reason why not interchangeable |
|---|---|---|---|---|---|
| 5 | Locomotives | - | Westinghouse Baldwin Electric Locomotives 1500/750 volts D.C. | No | Interurban Electric Locomotives. |
| 2 | " | - | 35 Ton Electric Loco. 1500/750 V D.C. | No. | Interurban Electric Locomotives |
| 2 | Express Cars | - | Self Propelled electric express car 40 T 1500/750 V DC | No | Interurban Electric car |
| 2 | Merchandise Cars | - | Self propelled Electric Mdse. Cars 1500/750 V DC | | |
| 15 | Passenger Motors | - | Self Propelled Passenger Motor cars 1500/750 V DC | No | Interurban Electric car |
| 7 | Passenger Trailers | - | Passenger Carrying Trailer | No | All wood construction non ARA Brake Rigging |
| 2 | Gondolas | C.M. | Flat bottom 60000 cap. | No | " " " " " " " |
| 1 | Flat Car | F.M. | Flat car 40000 capacity | No | " " " " " " " |
| 12 | " " | F.M. | Flat car 60,000 capacity | No | " " " " " " " |
| 15 | Box Cars | X.M. | Box Cars 60000 capacity | No | " " " " " " " |
| 22 | Ballast | M.W.B. | Roger Ballast 80000 capacity | No | " " " " " " " |
| 3 | Box | V.S. | Ventilated Box Cars 50000 cap. | No | " " " " " " " |
| 7 | Refrigerators | R.S. | Refrigerator Cars 50000 cap. | No | " " " " " " " |
| 12 | Stock Cars | S.M. | Stock Cars 60,000 capacity | Yes | " " " " " " " |
| 1 | Flat | F.M. | Steel Flat 100000 capacity | Yes | |
| 98 | Gondolas | F.S. | Beet & Coal cars, all steel, 100000 capacity | | |

(Plaintiff's Exhibit No. 7, offered and received in evidence, is in words and figures as follows:)

"Statement of Substation Power

335 "Installations on The Utah Idaho Central Railroad and tonnage limits as indicated by size of machines and location of contigous grades.

"Ogden, Utah, Mile Post 0—One motor Generator set 500 KW Will carry 500 ton load.

"Hot Springs, Utah, Mile Post 9—One motor generator set 500 KW. Will carry 550 ton load.

"Dewey, Utah, Mile Post 36—2 motor generator sets 500 KW each. Will carry 550 ton load.

"Smithfield, Utah, Mile Post 75—2 Motor generator sets, 500 KW each. Will carry 1000 ton load."

---

(Plaintiff's Exhibit No. 8, offered and received in evidence, is in words and figures as follows:)

"The Utah Idaho Central Railroad Company.

336 "Carrying Capacity Present Electrical Positive Feeder and Trolley Circuit and Negative Rail Circuit.

"The capacity of the Electrical Conductors are limited by their properties to carry amperes or quantity of current to the furtherest point from the station or sub-station without an impractical voltage drop.

"The following calculations will show that the positive and Negative Conductors are operating at their maximum practicable capacity with the tonnage ratings used over the controlling grades.

"The calculations show that with a 550 ton northbound train on the Brigham grade and another train at the Hyrum grade the approximate volts lost between these points and the substation is 500 volts. The effective voltage is approximately 1000. This we consider a practical load limit for the present system of conductors. Actual train loads tested in the past have confirmed these calculations quite closely.

"The joint resistance of the entire circuit consisting of 4/0 copper trolley wire, 7/16" steel catenary cable, 767,000 CM

aluminum feeder 70# steel rail and 4/0 copper bonds is .122 ohms per mile.

"Brigham Grade. Location 18 miles north of the Ogden Substation and 17 miles from the Dewey Substation. A train of 550 tons northbound makes a total power demand of approximately 660 K.W. Reduced to amperes this is $\frac{660,000}{1500}$ or 440 amperes. Amperes or Kilowatts supplied by the respective stations with no other load between Ogden and Dewey is inversely proportioned to the distance the load is from the substations. in this case Dewey will supply 214 amperes times 1500 volts or 320.5 K.W. Ogden portion of this load is 226 amperes times 1500 volts or 339.5 K.W. The volts drop is amperes times miles times ohms per mile or 226 times 18 times .122 which is 470 volts loss from the substations to the locomotive. The effective volts at the locomotive being 1500 minus 470 or 1030.

"2-

"An attempt to move a 1100 ton train up this grade would result in approximately a total power demand of 1320 K.W. Power demand raises in proportion, if the speed is not changed. Amperes would be twice 440 or 880. Portion of current and power furnished would be twice the amount shown for 550 ton train or Dewey 428 Amperes or 641 K.W. and Ogden 552 Amperes or 679 K.W. Volts drop from the substation to the Locomotive would be 470 times 2 or 940. The effective volts would be 1500 minus 940 or 560 which would not move the load—other tonnages would be in proportion.

"Hyrum Grade—Location 22 miles north of Dewey Substation and 17 miles south of Smithfield Substation. A train of 550 tons northbound makes a total power demand of approximately 660 K.W reduced to amperes this is $\frac{660,000}{1500}$ of 440 amperes. Amperes or Kilowatts supplies by the respective stations with no other load between Dewey and Smithfield is inversely proportioned to the distance the load is from the substations. In this case Dewey will supply 193 amperes times 1500 volts or 290 kilowatts. Smithfield portion of this load is 247 amperes times 1500 volts or 370 kilowatts. The volts drop is amperes times miles times ohms per mile or 247 times 17 times .122 which is 505 volts lost from the substation to the locomotive. The effective volts at the locomotive being 1500 minus 505 or 995.

"An attempt to move a 1100 ton train up this grade would result in approximately a total power demand of 1320 kilowatts. Power demand raises in proportion if the speed is not changed. Amperes would be twice 440 or 880. Portion of the current furnished would be twice the amount shown for a 550 ton train or Dewey 396 amperes or 580 kilowatts and Smithfield 247 amperes or 740 kilowatts. The volt drop from the substation to the locomotive would be 505 times 2 or 1010 volts. The effective volts would be 1500 minus 1010 or 490 volts which would not move the load—other tonnages would be in proportion."

---

(Plaintiff's Exhibit No. 9, offered and received in evidence, is in words and figures as follows:)

"Before The Interstate Commerce Commission

"The Utah Idaho Central Railroad Company

Character of Track Construction

| | | Main Line Miles | Branch Line Miles | Sidings Spur Yards Miles | Total |
|---|---|---|---|---|---|
| 85# | Rail | 2.26 | | .06 | 2.32 |
| 75# | " | | | 1.53 | 1.53 |
| 70# | " | 80.52 | | 2.01 | 82.53 |
| 65# | " | 11.19 | .73 | 3.10 | 15.02 |
| 60# | " | .66 | | 2.56 | 3.22 |
| 45-48 | " | | 20.39 | 26.19 | 46.58 |
| 40# | " | | | 1.48 | 1.48 |
| Totals | | 94.63 | 21.12 | 36.33 | 152.68 |
| Miles Tieplates | | 11.30 | | | 11.30 |

"All Cross Ties 6#x8#x8'0"

" " " Spaced 2'0" on center 2640 per mile"

---

## Exhibit 10 (Abstracted)

219 The car capacity of spur and passing tracks on the Utah Idaho Central Railroad is shown by the following table:

| Car Capacity | Number of Spur or Passing Tracks | Car Capacity | Number of Spur or Passing Tracks |
|---|---|---|---|
| 2 | 1 | 17 | 4 |
| 3 | 0 | 18 | 1 |
| 4 | 3 | 19 | 1 |
| 5 | 2 | 20 | 6 |
| 6 | 7 | 21 | 2 |
| 7 | 3 | 22 | 1 |
| 8 | 6 | 23 | 5 |
| 9 | 1 | 24 | 0 |
| 10 | 2 | 25 | 1 |
| 11 | 5 | 26 | 3 |
| 12 | 1 | 27 | 5 |
| 13 | 2 | 28 | 0 |
| 14 | 3 | 29 | 1 |
| 15 | 1 | 30 | 4 |
| 16 | 2 | 31 | 1 |
| | | 32 | 1 |

The average length of the spur or passing tracks is 16 cars; the maximum, 32 cars; and the minimum, 2 cars.

344 (Plaintiff's Exhibit No. 11, offered and received in evidence, is in words and figures as follows:)

Exhibit No. 11

"The Utah Idaho Central Railroad Company, Miles Main Line Track Located in Public Street and Public Highways.

Main Line Ogden to Preston

| Location | Mile Post | to | Mile Post | Miles Main Track |
|---|---|---|---|---|
| Ogden | 0.0 | | .93 | .93 |
| Willard | 13.32 | | 14.12 | .80 |
| Perry | 16.81 | | 17.27 | .46 |
| Brigham | 19.84 | | 21.86 | 2.02 |
| Honeyville | 30.30 | | 30.49 | .19 |
| Mendon | 50.18 | | 51.25 | 1.07 |
| Wellsville | 55.50 | | 56.60 | .88 |
| Hyrum | 59.87 | | 60.32 | .45 |
| Millville | 63.62 | | 64.22 | .60 |
| Providence | 65.43 | | 65.96 | .53 |
| Logan | 66.90 | | 68.88 | 1.98 |
| Hyde Park | 72.16 | | 72.97 | .81 |
| Smithfield | 74.09 | | 76.07 | 1.98 |
| Richmond | 60.56 | | 81.28 | .72 |
| Preston | 94.02 | | 94.70 | .68 |
| | | | | 14.10 |

Ex. 11

"Plain City Branch

"Harrisville to Plain City

| Location | Mile Post | to | Mile Post | Miles Main Track |
|---|---|---|---|---|
| County Road | 0.0 | | 1.88 | 1.88 |
| " " | 2.28 | | 3.09 | .81 |
| " " | 3.40 | | 5.90 | 2.10 |

"Plain City Junction to Warren

| | | | |
|---|---|---|---|
| County Road | 0.0 | 0.35 | .35 |
| | | | 5.14 |

"Quinney Branch

| | | |
|---|---|---|
| County Road | Mills Branch | 1.40 |
| 345 Grand Total | | 20.64 |

"Percentage of road on Public Streets 18.2%."

---

Before The Interstate Commerce Commission

Re Railway Labor Act)
Docket #11. ) Exhibit #12

345½ Various Station Plats on The Utah Idaho Central Railroad Company showing restrictive curvature of turnouts, sidings, and spurs.

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TRADE MARK ®

22

8|3

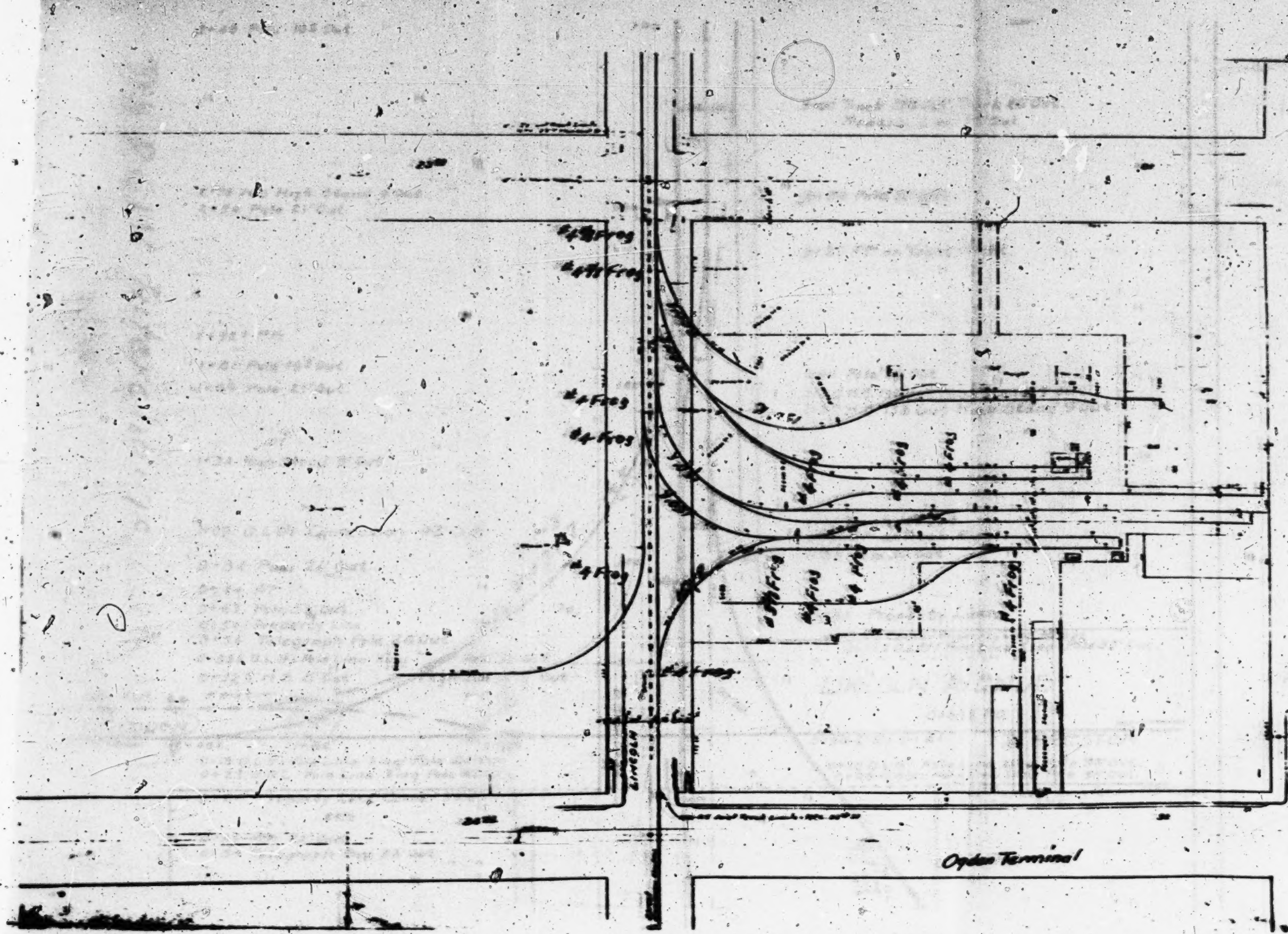
1

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6|0|1

9|6|9

microcard


Ogden Terminal

D&RGW Railroad

2+40 Pole 10' Out.

2+36 N.B High Stand 9' Out
2+34 Pole 21' Out.

1+92.5 P.F.

1+81 Pole 19' Out.
1+69 Pole 21' Out.

1+34 High Stand 9' Out

1+00 O.L.&U. Connection 42' Out

0+84 Pole 21' Out.
0+64 P.F.
0+63 Pole 38' Out.
0+56 Property Line
0+54 Telegraph Pole 28' Out
0+35.5 O.L.&U. Pole Line Xing Pole 30' Out.
0+32.5 N.B. 8' Out High Stand 9' Out
143 N.B. P.F. 97' P.F. 97'
TO OGDEN
0+18 O.L.&U. Pole Line Xing Pole 84' Out
0+23 U.P.L. Pole Line Xing Pole 92' Out.
0+24 Property Line Corner 79' Out.
0+47 P.F. 22' Out
0+54 Telegraph Pole 98' Out.

3+00 Track 138 Out Track 25' Out.
Property Line 37' Out

2+58 Pole 38' Out.

2+27 P.F. on Track Right.

1+68 Pole 36' Out
1+60 N.B. 138 Out High Stand 9' Out
1+53 N.B. 138 Out High Stand 9' Out.

1+00 Track 135 Out.
0+91 P.F. on Track Right.
0+84 Pole 30' Out.

0+48 Property Line.
0+48 Corner Property Line 38' Out.
0+35.3 O.L.&U. Pole Line Xing Pole 85' Out.

LINCOLN AVENUE
0+03.2 P.C.

6+00 & O.L.&U. R.T. TO PRESTON

0+18 O.L.&U. Pole Line Xing Pole 38' Out.
0+23 U.P.&L. Pole Line Xing Pole 34' Out.
0+24 Property Line Corner 118' Out
Spur 78' Out.

N.B. 0+32.

1+00

1+50

2+00

AVE.

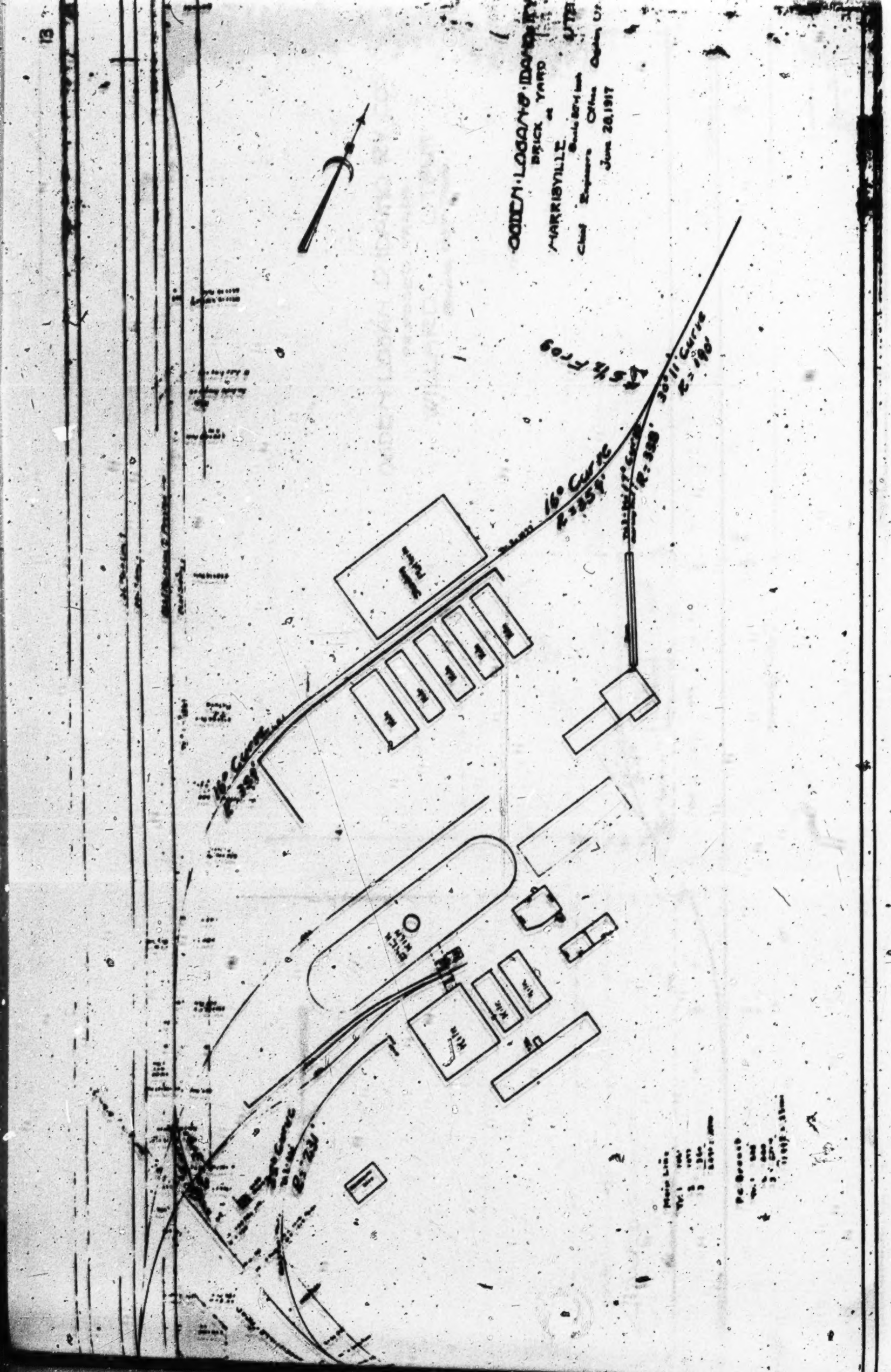
100' R

60° Curve
R 100'

COLN

American Con Spur
Ogden

UTAH IDAHO CENTRAL R
GENERAL LAYOUT
CAR BARNS, REPAIR SHOP
AND
FREIGHT YARDS
AT
OGDEN, UTAH.


Ogden, Logan & Idaho Ry.
Brick Yard
Harrisville
Utah
Chief Engineer's Office
June 28, 1917
16° Curve
R = 358'
30° 11' Curve
R = 190'
Water Tank
Brick Kilns
Brick Kilns
Brick Kilns

OGDEN LOGAN & IDAHO RY & CO.

PROPOSED YARDS.

WILLARD UTAH

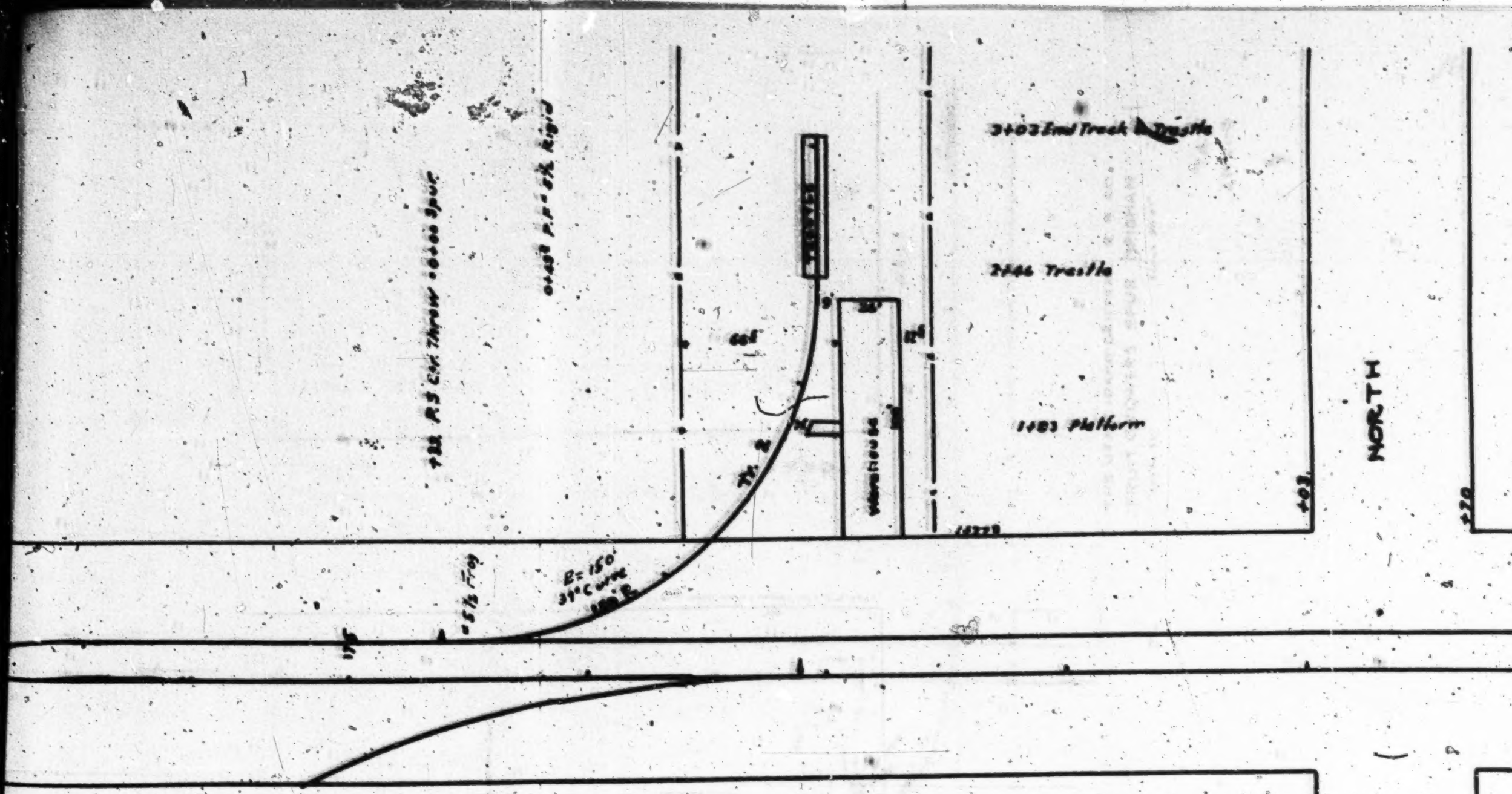
Scale 50'=1 Inch.

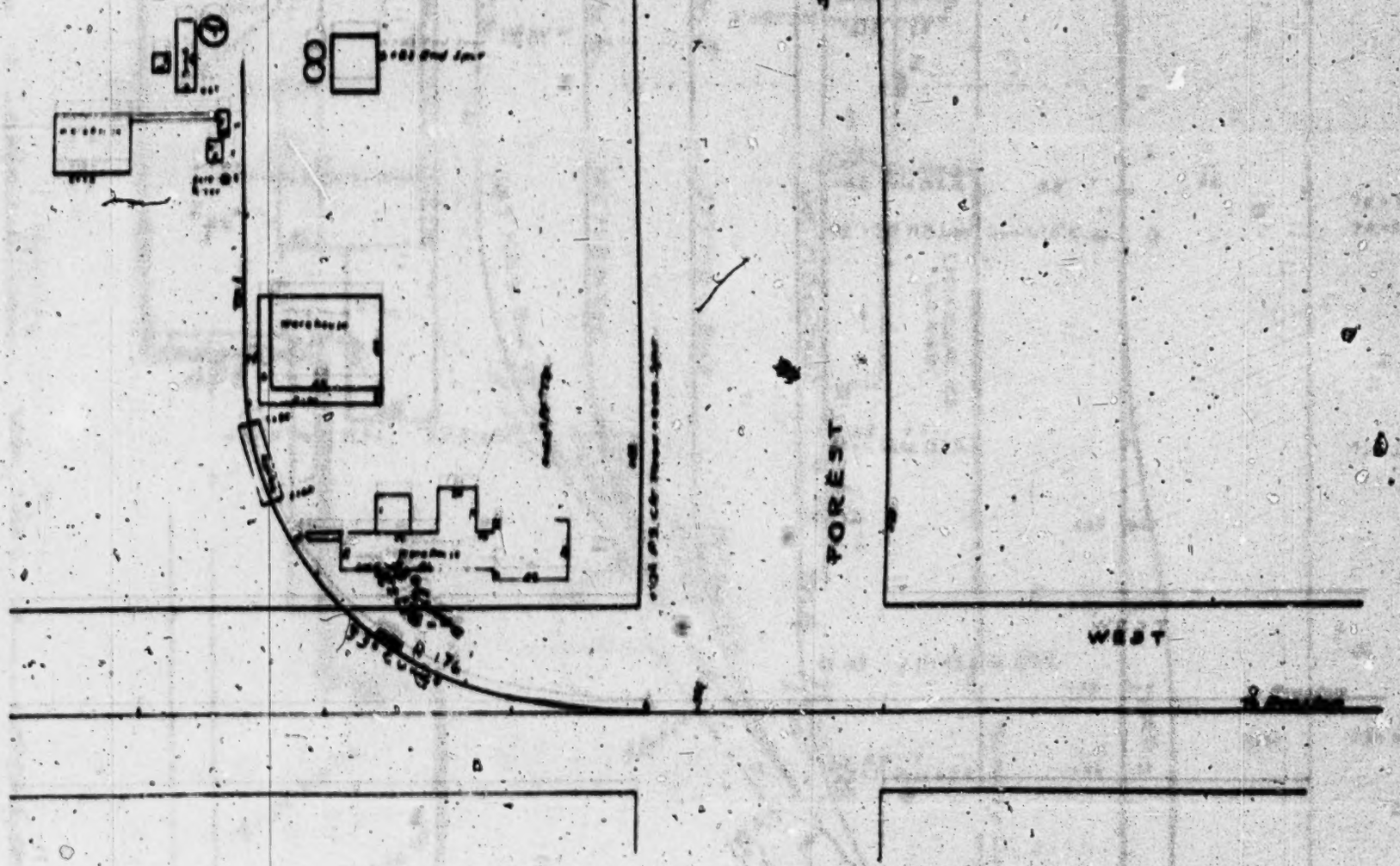
8th STREET

Property Line

Property Line

Property Line?


3403 End Track & Trestle
3346 Trestle
1403 Platform
NORTH
B=150'
31° Curve
Cosh Feed Spur
Brigham




THE UTAH IDAHO CENTRAL R.R. CO.
FRUIT GROWERS SPUR BRIGHAM

74
4M 21-8

FOREST AVENUE

O.L.&I. DEPOT

LION COAL Co. LEASE

Property Line

660

396'

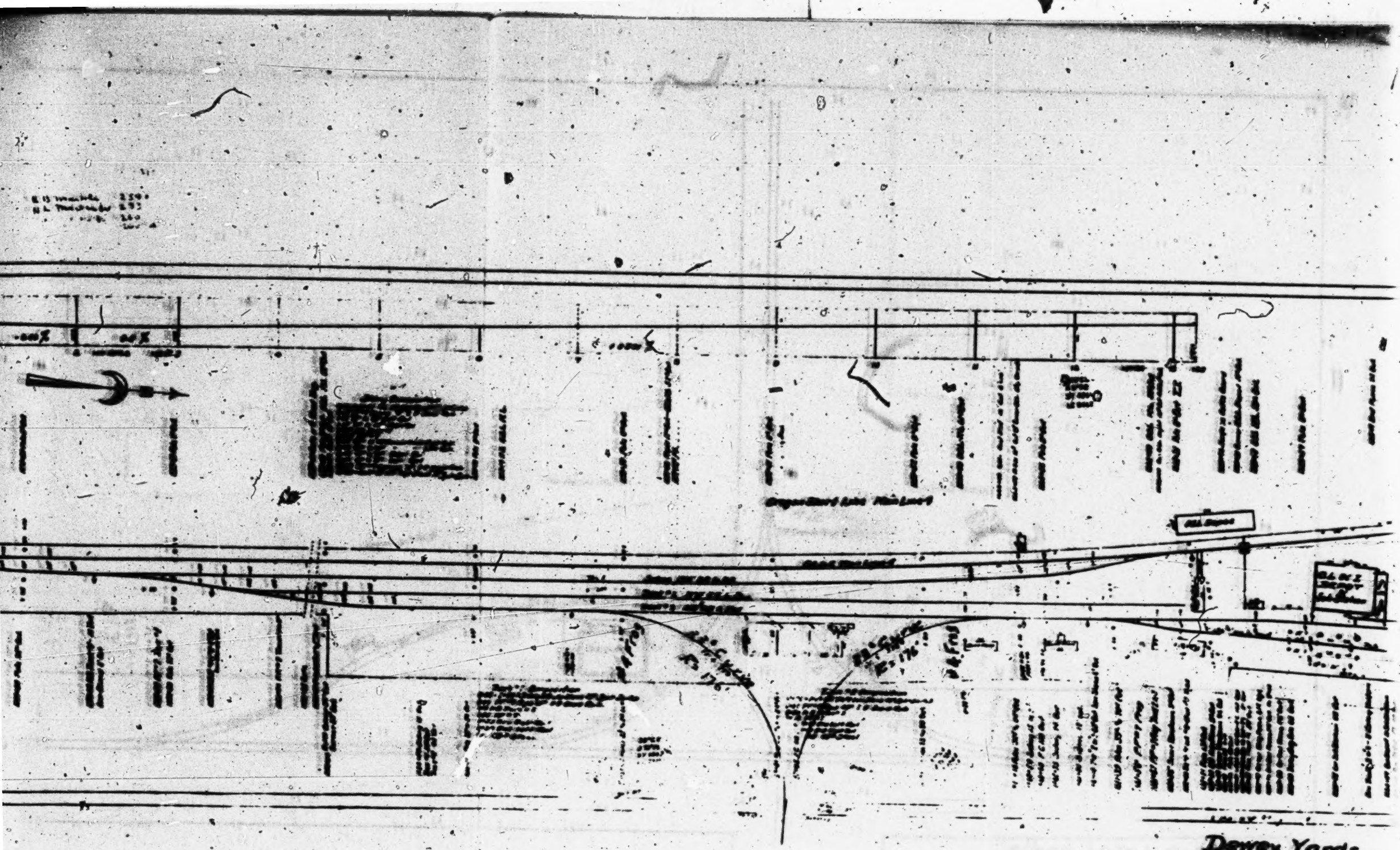
165'

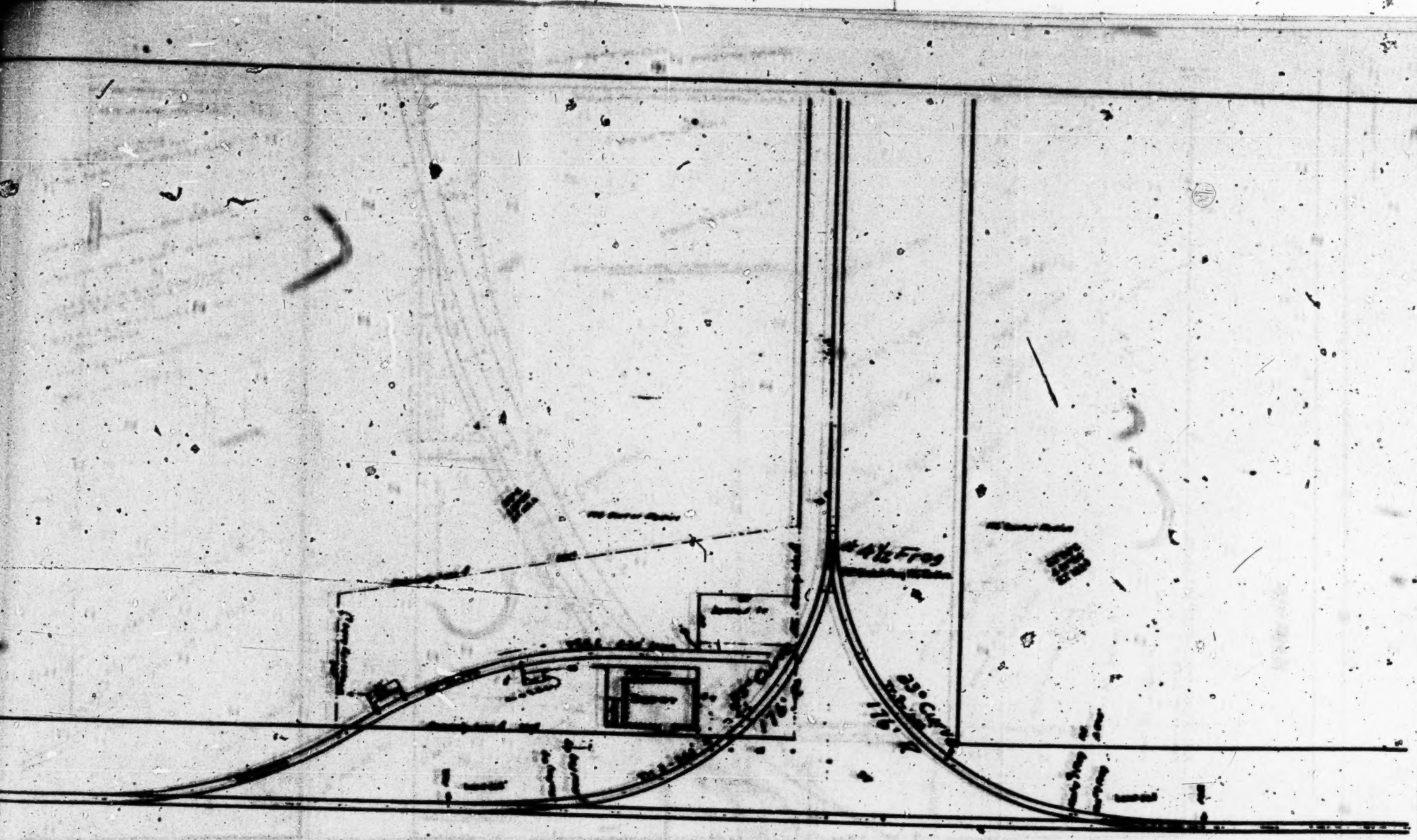
342'

373' MB to End

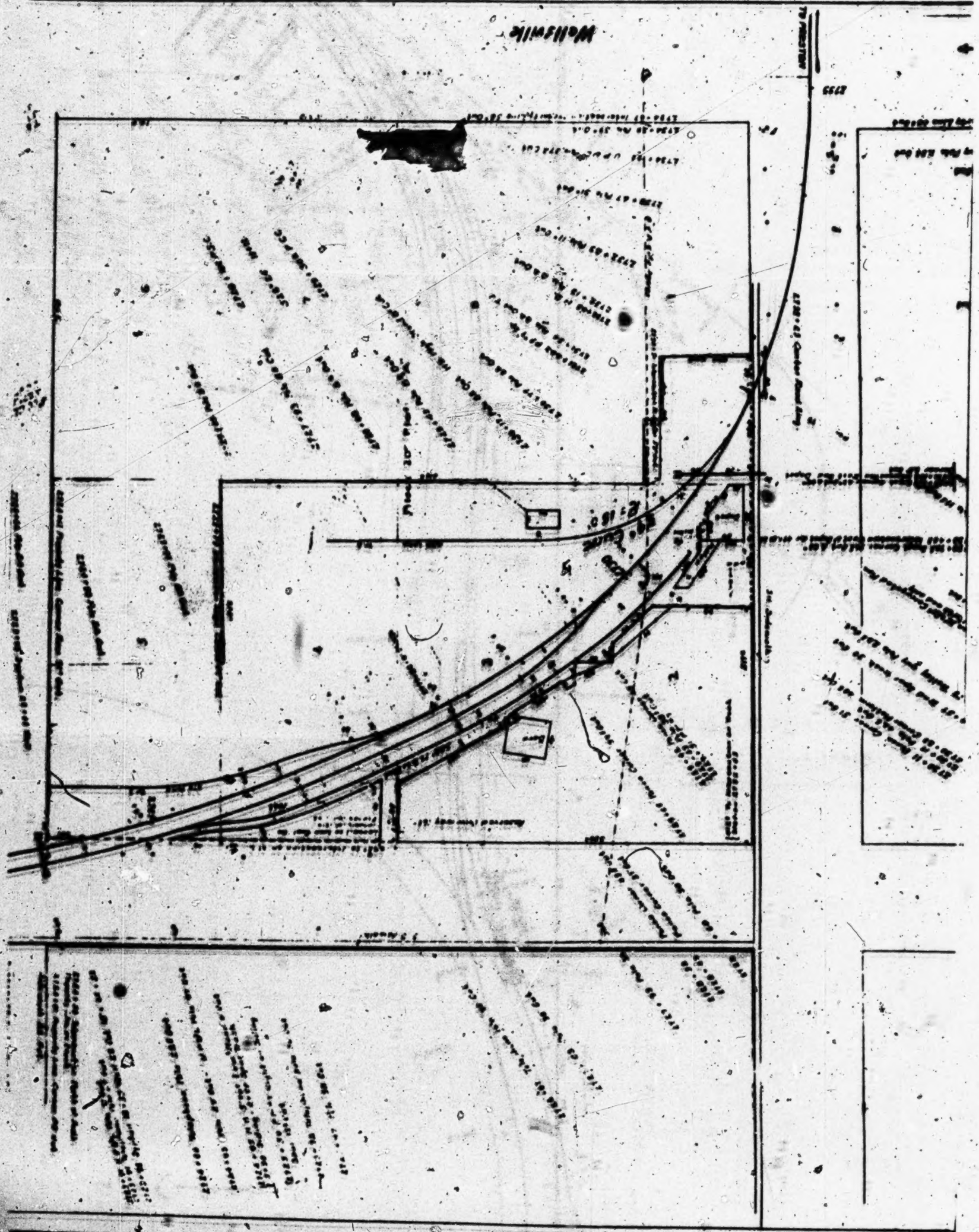
385' MB to End

Brigham yards


Dewey Yards




OGDEN LOGAN & IDAHO RY. CO.
Plot Showing
DEPOT, SPUR AND WYE
AT
BRENDON, UTAH.



T11N. R1E. SLM.

T10N

STREET

OGDEN LOGAN & IDAHO R.R.

PLAT OF

GENERAL FREIGHT INTERCHANGE

AT

HYRUM — UTAH

OGDEN LOGAN & IDAHO RY.

PROVIDENCE, UTAH

103

SECOND SOUTH ST.

FIRST WEST ST.

MAIN STREET

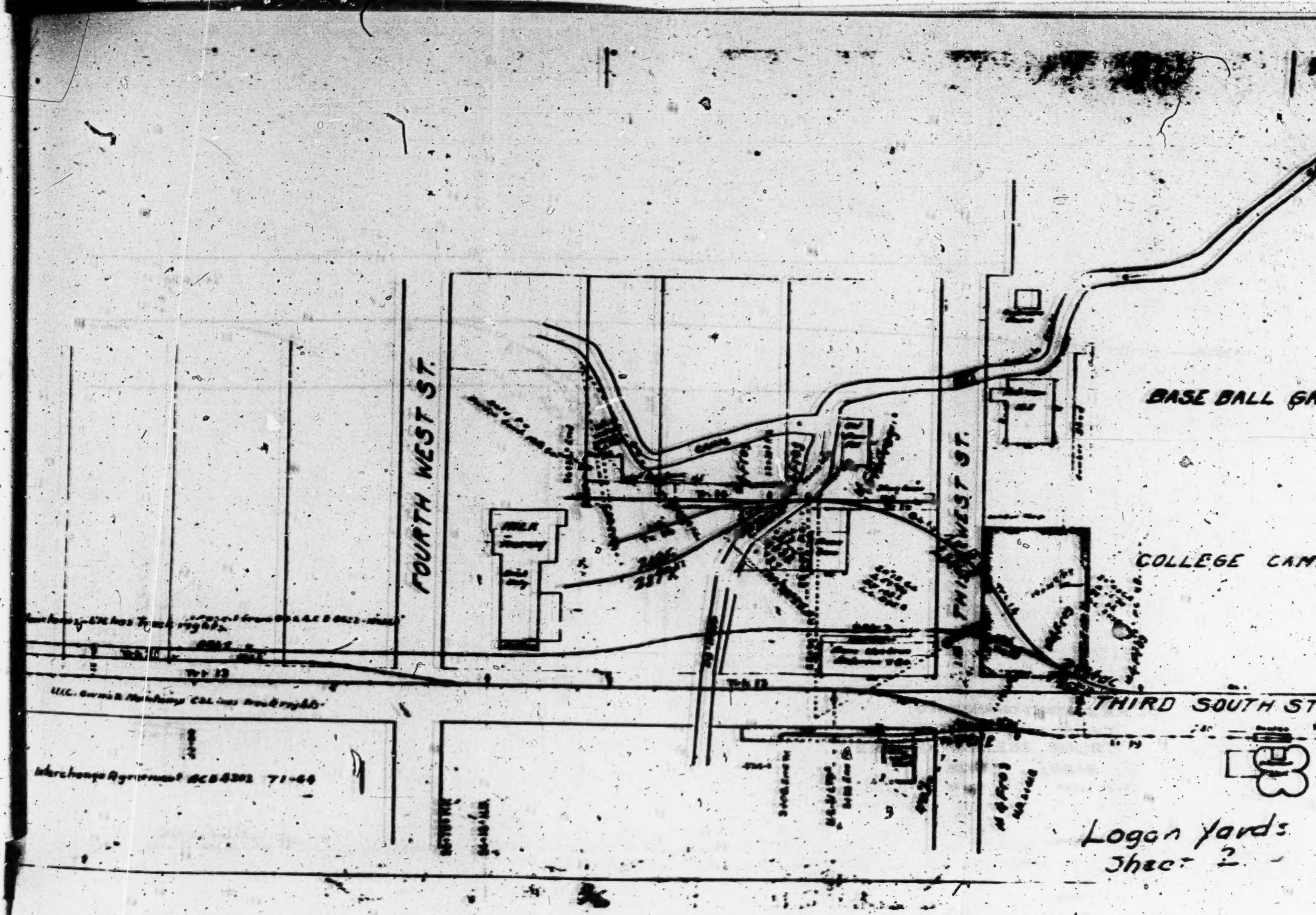
POND

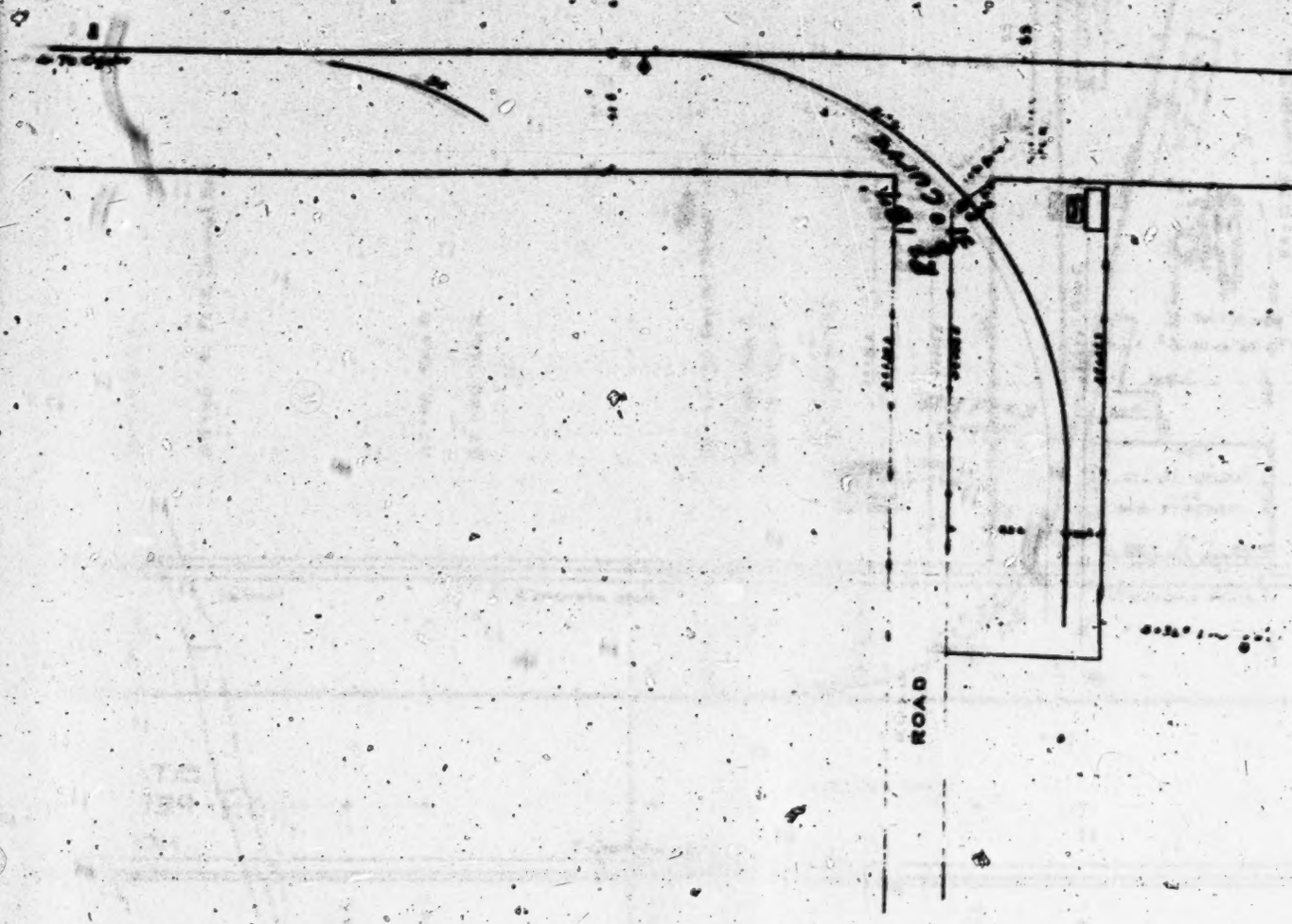
OGDEN LOGAN ~ IDAHO RY.

FREIGHT YARDS ~ INTERCHANGE WITH

OREGON SHORT LINE R.R. & LOGAN UTAH

Chief Engineers Office Ogden Utah

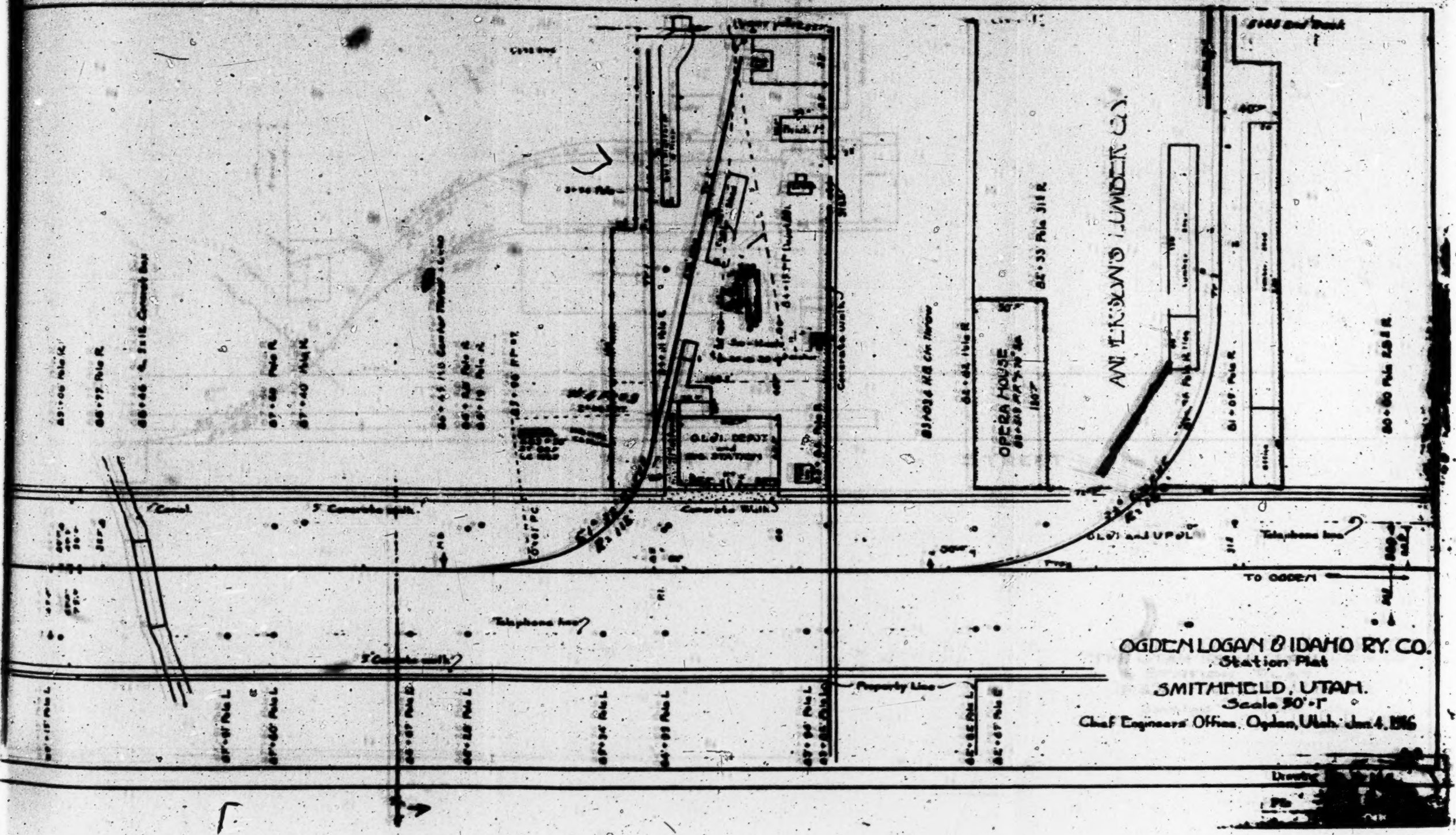

FOURTH WEST ST.
THIRD WEST ST.
BASE BALL GR
COLLEGE CAM
THIRD SOUTH ST
Interchange Agreement ACS 6301 71-64
Logan Yards
Sheet 2

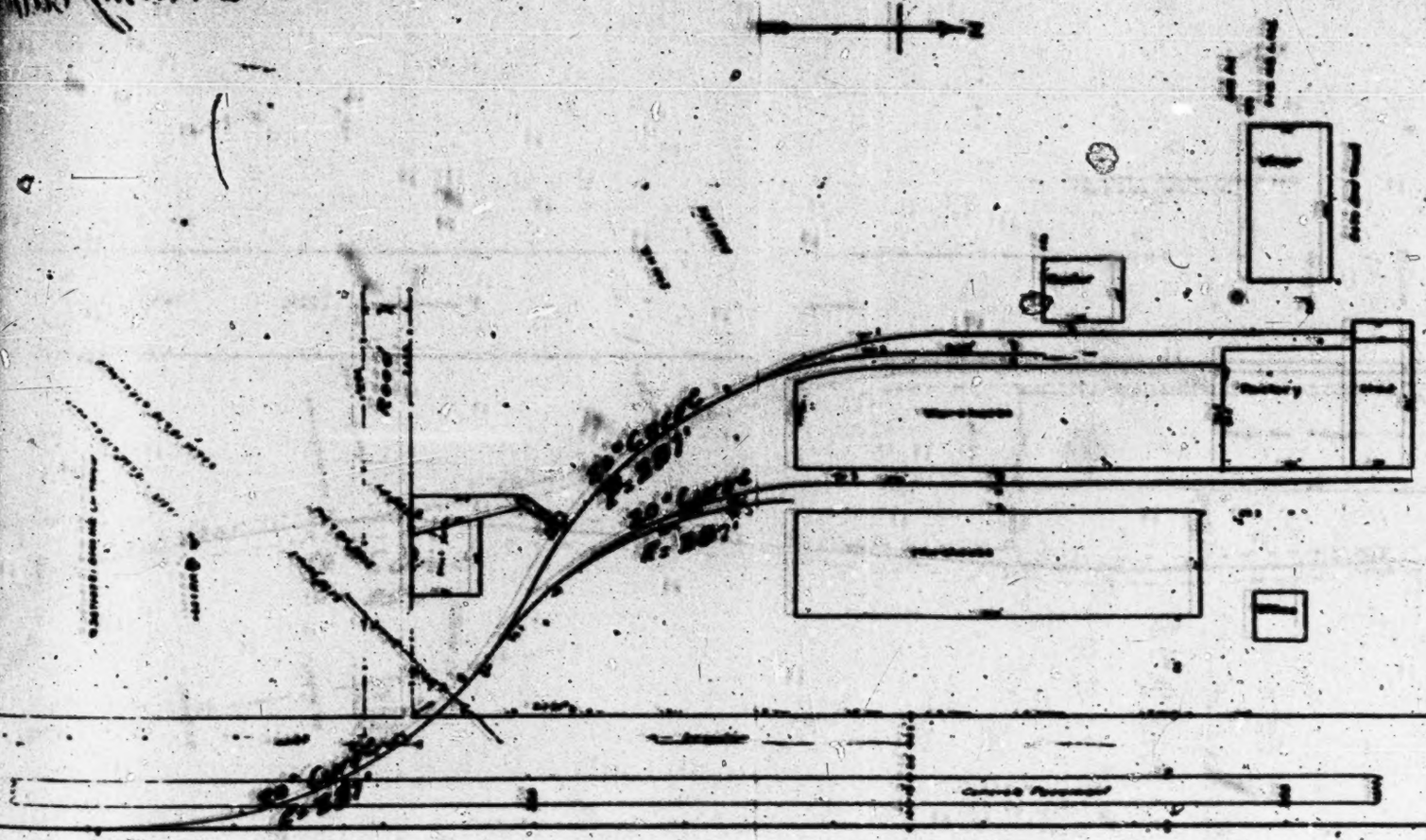



Spur Relocated in 1938
Spur to Long Bell Lbr. Co. Now Weber Basin Proj.

UTAH IDAHO CENTRAL R.R. CO.
STATION PLAT
VERNON-PEERLESS SPURS
NORTH LOGAN
MARCH 1937 SCALE 50'=1"

610'
4 M 604


OGDEN LOGAN & IDAHO RY. CO.
Station Plat
SMITHFIELD, UTAH.
Scale 50'-1"
Chief Engineers' Office, Ogden, Utah, Jan 4, 1916
OPERA HOUSE
ANTELOPE
Telephone line
TO OGDEN
Property Line
Concrete Walk
Canal




THE UTAH IDAHO CENTRAL R.R. CO.
STATION PLAT
PEA FACTORY SPUR
Smithfield Utah
March 1927 Scale 50-1'

611
2M 24-2

28

N° Curve
R = 359'

Block 51 Plat A
Richmond Farm Survey

Lot 1

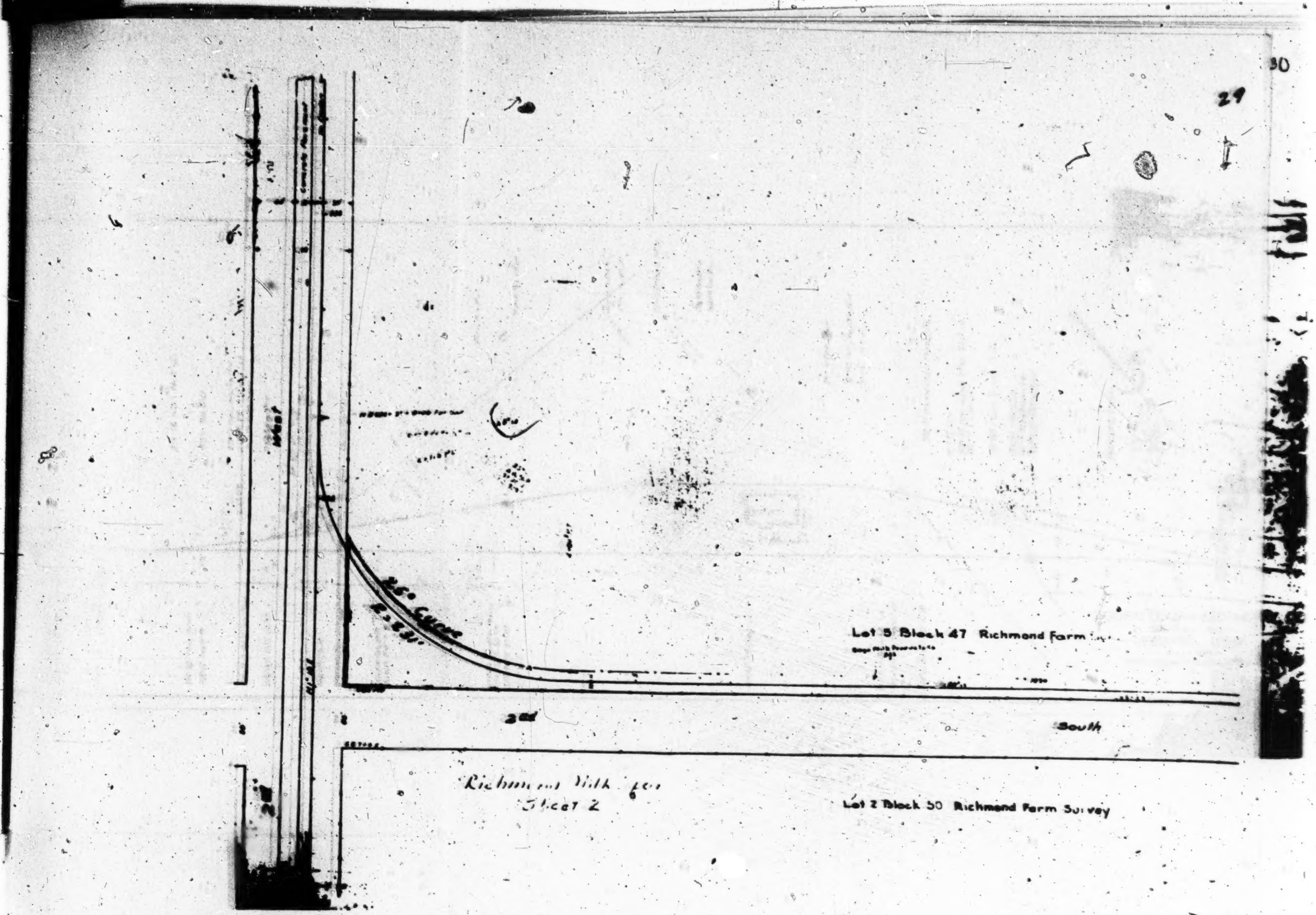
Lot 8

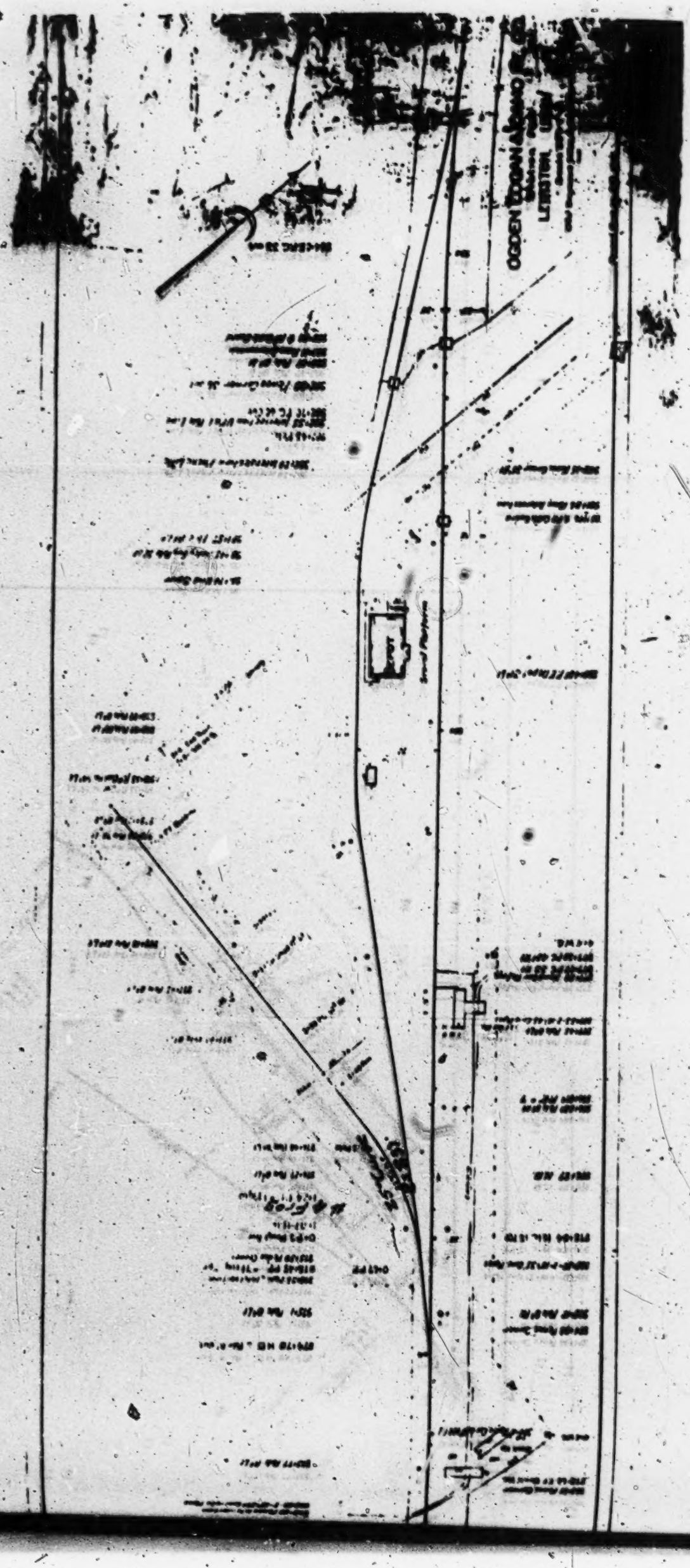
Lot

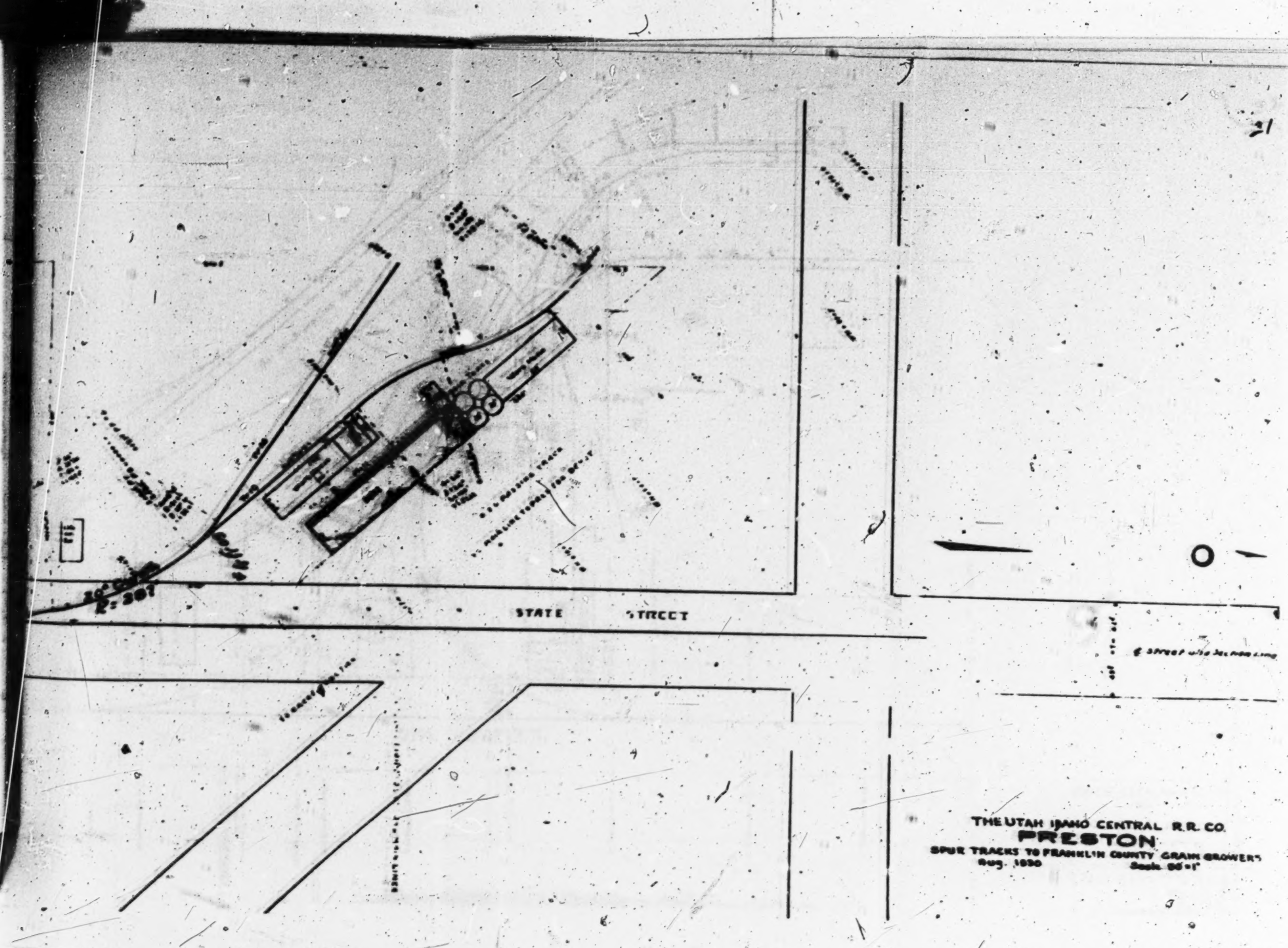
UTAH IDAHO CENTRAL RR CO.
RICHMOND MILK SPUR
March 1931 Scale 50'-1"

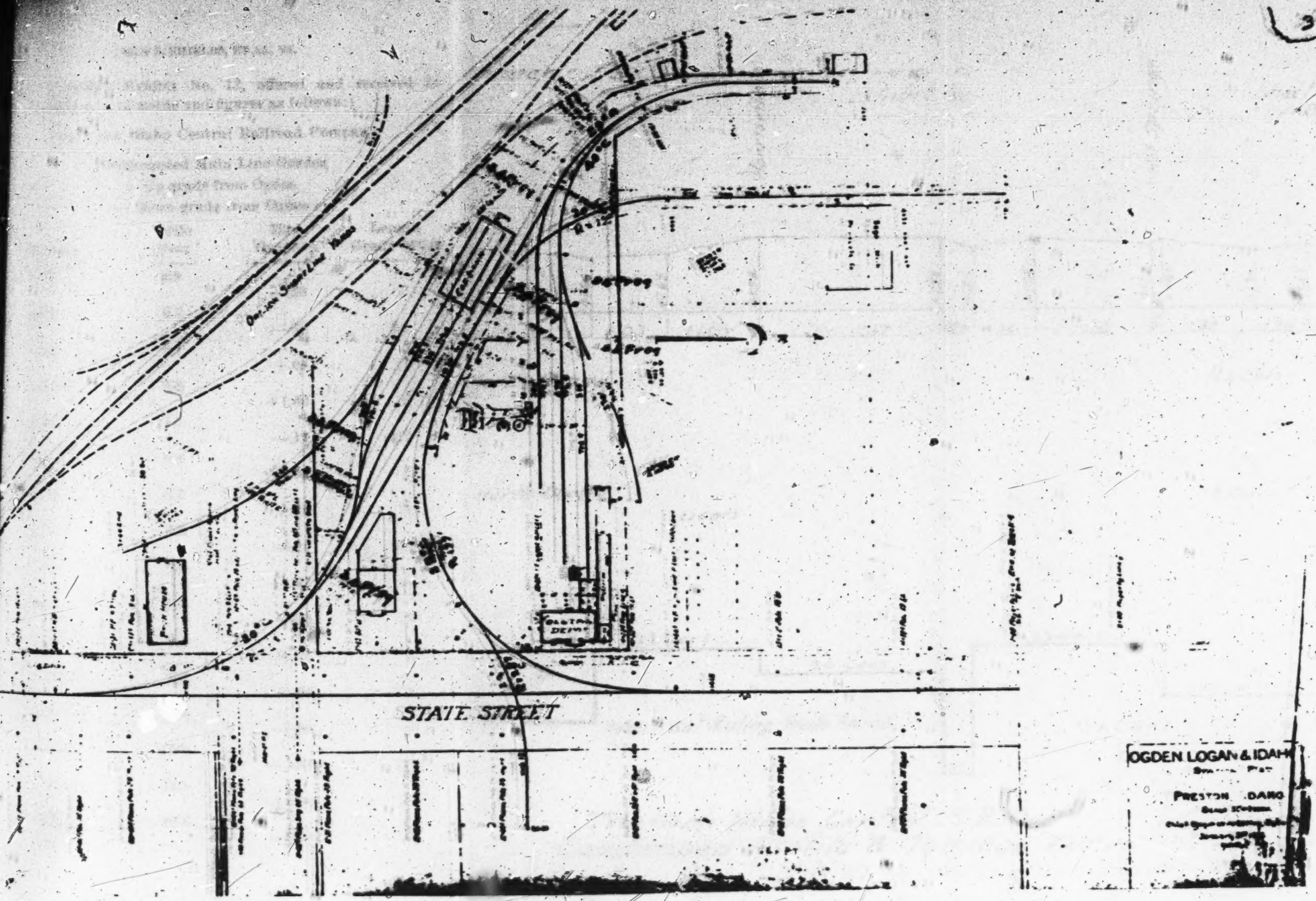
Sheet 1

632
4180-B


30
29
Lot 5 Block 47 Richmond Farm
South
Richmond Hill for
Sheet 2
Lot 2 Block 50 Richmond Farm Survey




STATE STREET
THE UTAH IDAHO CENTRAL R.R. CO.
PRESTON
SPUR TRACKS TO FRANKLIN COUNTY GRAIN GROWERS
Aug. 1930
Scale 50'=1"


STATE STREET
OGDEN LOGAN & IDAHO
PRESTON DARO

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346 (Plaintiff's Exhibit No. 13, offered and received in evidence, is in words and figures as follows:)

"The Utah Idaho Central Railroad Company

"Pronounced Main Line Grades

+ Up grade from Ogden

— Down grade from Ogden

| Elevation | Mile Post | Max. Grade % | Length Grade Miles |
|---|---|---|---|
| 4,302 | 0.0 | | |
| | | —.20 | .7 |
| 4,299 | 0.7 | | |
| | | —.58 | 2.4 |
| 4,264 | 3.1 | | |
| | | +.03 | .7 |
| 4,265.05 | 3.8 | | |
| | | +1.00 | .9 |
| 4,298 | 4.7 | | |
| | | —.17 | 1.7 |
| 4,288 | 6.4 | | |
| | | —.93 | .3 |
| 4,275 | 6.7 | | |
| | | +.42 | .6 |
| 4,285 | 7.3 | | |
| | | —.20 | 1.1 |
| 4,275 | 8.4 | | |
| | | +1.67 | .1 |
| 4,280 | 8.5 | | |
| | | —.40 | .9 |
| 4,255.75 | 9.4 | | |
| | | +.36 | .5 |
| 4,263.66 | 9.9 | | |
| | | —.60 | .4 |
| 4,252.82 | 10.3 | | |
| | | +.80 | .3 |
| 4,256.58 | 10.6 | | |
| | | —1.50 | 1.5 |
| 4,203.76 | 12.1 | | |
| | | +1.90 | 1.7 |
| 4,306.08 | 13.8 | | |
| | | —1.25 | 1.7 |

Ex. 13 438

| Elevation | Mile Post | Max. Grade % | Length Grade Miles |
|---|---|---|---|
| 4,248.76 | 15.5 | | |
| | | +1.67 | 1.2 |
| 4,320.88 | 16.7 | | |
| | | —2.00 | .9 |
| 4,271.88 | 17.6 | | |
| | | —.50 | 1.1 |
| 4,254.88 | 18.7 | | |
| | | +2.00 | 1.7 |
| 4,374.41 | 20.4 | | |
| | | —1.83 | 2.9 |
| 4,221.26 | 23.3 | | |
| | | +.50 | .9 |
| 4,228.02 | 24.2 | | |
| | | —1.20 | .6 |
| 4,216.20 | 24.8 | | |
| | | +.58 | 11.8 |
| 4,324.36 | 36.6 | | |
| | | +2.00 | 4.6 |
| 4,701.65 | 41.2 | | |
| | | —.20 | .1 |
| 4,700.45 | 41.3 | | |
| | | +1.81 | 3.6 |
| 4,961.16 | 44.9 | | |
| | | —2.00 | 5.5 |
| 4,470.76 | 50.4 | | |
| | | +.72 | .5 |
| 4,486.12 | 50.9 | | |
| | | —.67 | .1 |
| | "(2) | | |
| 4,483.22 | 51.0 | | |
| | | +1.67 | .3 |
| 4,498.01 | 51.3 | | |
| | | —1.10 | .5 |
| 4,477.13 | 51.8 | | |
| | | —.54 | 1.6 |
| 4,470.05 | 53.4 | | |
| | | +1.14 | .8 |
| 4,511.05 | 54.2 | | |
| | | —.02 | .9 |

Ex. 13

| Elevation | Mile Post | Max. Grade % | Length Grade Mile |
|---|---|---|---|
| 4,510.09 | 55.1 | | |
| | | +1.41 | .3 |
| 4,528.95 | 55.4 | | |
| | | —1.40 | .2 |
| 4,522.42 | 55.6 | | |
| | | +.84 | .4 |
| 4,537.32 | 56.0 | | |
| | | —1.40 | 1.1 |
| 4,488.12 | 57.1 | | |
| | | +2.00 | 3.0 |
| 4,655.51 | 60.1 | | |
| | | 0.0 | .2 |
| 4,655.51 | 60.3 | | |
| | | —1.98 | .8 |
| 4,611.67 | 61.1 | | |
| | | —.60 | 1.1 |
| 4,608.73 | 62.2 | | |
| | | —.90 | 1.4 |
| 4,551.35 | 63.6 | | |
| | | +1.34 | .6 |
| 4,575.99 | 64.2 | | |
| | | —1.14 | 2.7 |
| 4,506.00 | 66.9 | | |
| | | +.26 | .6 |
| 4,517.00 | 67.5 | | |
| | | +4.77 | .1 |
| 4,535.00 | 67.6 | | |
| | | —.44 | 4.6 |
| 4,495.00 | 72.2 | | |
| | | +1.50 | .3 |
| 4,515.00 | 72.5 | | |
| | | +.40 | 1.5 |
| 4,526.00 | 74.00 | | |
| | | +1.80 | 1.0 |
| 4,605.00 | 75.00 | | |
| | | —.72 | .5 |

Ex. 13 440

| Elevation | Mile Post | Max. Grade % | Length Grade Miles |
|---|---|---|---|
| 4,593.20 | 75.50 | | |
| | | +1.59 | .6 |
| 4,614.98 | 76.1 | | |
| | | —.30 | 1.1 |
| 4,601.55 | 77.2 | | |
| | | —2.00 | 1.3 |
| 4,527.71 | 78.5 | | |
| | | +1.75 | 2.0 |
| 4,594.25 | 80.5 | | |
| | | —1.50 | .3 |
| 4,581.50 | 80.8 | | |
| | | +.85 | .5 |
| 4,607.25 | 81.5 | | |
| | | —2.00 | .6 |
| 4,552.70 | 81.9 | | |
| | | +.90 | .8 |
| 4,654.05 | 82.7 | | |
| | | —1.38 | .3 |
| 4,564.05 | 82.7 | | |
| | | —1.38 | .3 |
| 4,558.16 | 83.3 | | |
| | | —2.00 | 1.3 |
| 4,467.18 | 84.6 | | |
| | | +1.89 | .5 |
| 4,503.00 | 85.1 | | |
| | | +.40 | 3.8 |
| | "(3) | | |
| 4,515.90 | 88.9 | | |
| | | —1.18 | .4 |
| 4,495.75 | 89.3 | | |
| | | +.41 | 1.7 |
| 4,517.81 | 91.0 | | |
| | | +.20 | 3.0 |
| 4,703.11 | 94.0 | | |
| | | +.4 | .7 |
| 4,705.8 | 94.7 | | |

Ex. 14

348½ (Plaintiff's Exhibit 14, offered and received in evid
is in words and figures as follows:)

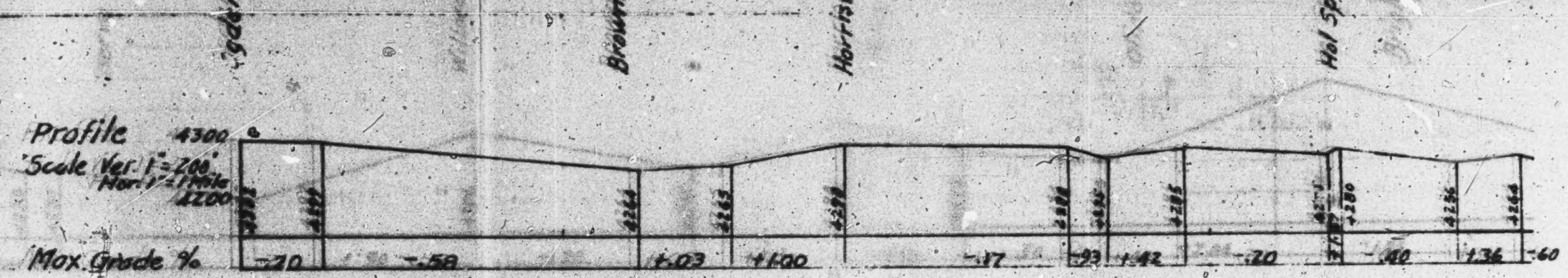
Exhibit #14

Before the Interstate Commerce Commission

Exhibit #14

The Utah Idaho Central Railroad Company Coded
Profile and Locomotive Tonnage Curve.

Before the Interstate Commerce Commission Railway Service
Docket No 2 Exhibit No. Sheet 1 of 8




The Utah-Idaho Central R.R. Co.
Condensed Profile & Tonnage Curve

Note: Tonnage Curve shows Technical Factory Rating and Practical Operating Rating

Sheet 2 of 8

Nervo

Willard

Perry

Ohio

Brigham

22 Cars

22 Cars

22 Cars

22 Cars

12 Cars

6 Cars

7 Cars

14 Cars

5 Cars

22 Cars

22 Cars

22 Cars

22 Cars

8 Cars

14 Cars

3 Cars

5 Cars

18 Cars

12 Cars

6 Cars

11 12 13 14 15 16 17 18 19 20 21 22

Sheet 3 of 8

Bonnieville

Cobb Park

Hardyville

Madden

22 Cars

17 Cars

14 Cars

22 Cars

18 Cars

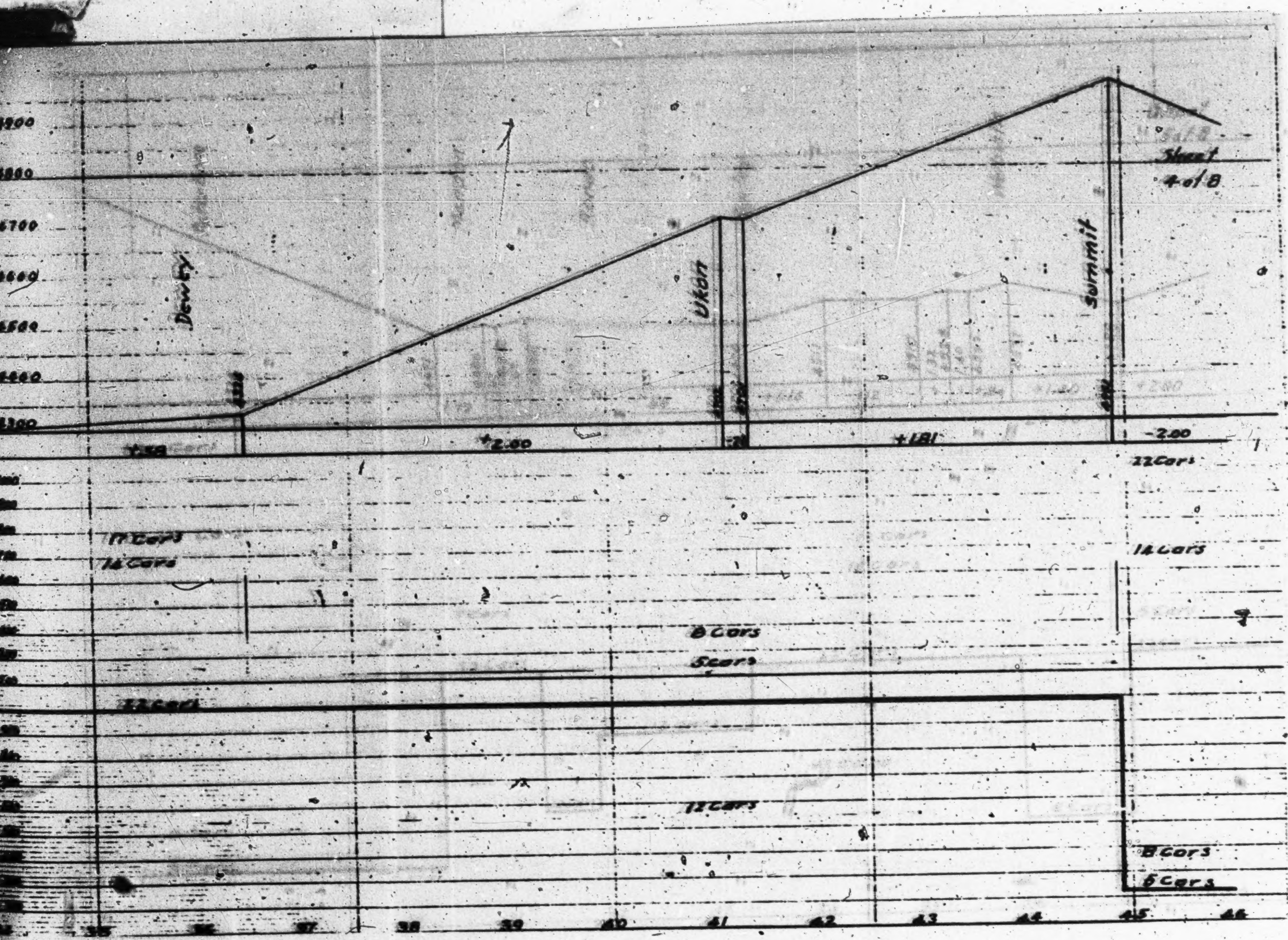
6 Cars

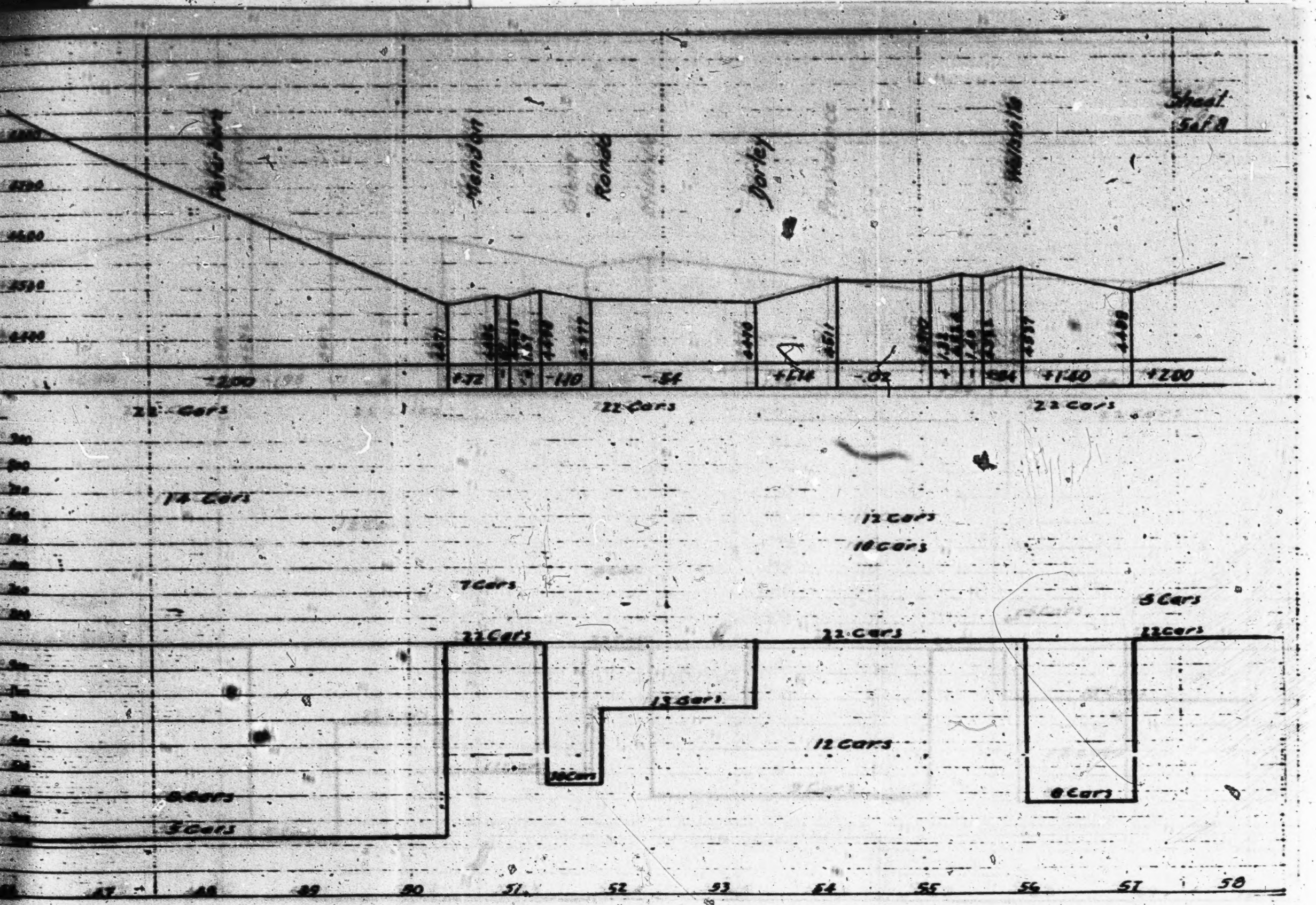
31

32

33

34


Dewey
Ukon
Summit
Sheet 4 of 8
+1.58
+2.00
-2.00
+1.81
22 Cors
11 Cors
14 Cors
8 Cors
5 Cors
12 Cors
8 Cors
6 Cors
37
38
39
40
41
42
43
44
45
46


Sheet 5 of 8
-2.00
+.72
-.110
-.54
+1.14
-.02
+1.60
+2.00
22 Cars
22 Cars
22 Cars
14 Cars
12 Cars
10 Cars
7 Cars
5 Cars
22 Cars
22 Cars
22 Cars
13 Cars
12 Cars
10 Cars
8 Cars
8 Cars
3 Cars
47
48
49
50
51
52
53
54
55
56
57
58

Sheet 6 of 8

Hyram

Glam

Millville

Providence

Logan

+200 -198 -60 -90 +134 -1.14 -136 -144

23 Cars

23 Cars

12 Cars

6 Cars

23 Cars

11 Cars

11 Cars

6 Cars

9 Cars

23 Cars

23 Cars

23 Cars

18 Cars

12 Cars

59 60 61 62 63 64 65 66 67 68 69 70

Sheet 7 of 8

Greenville | Tarleton | Hyde Park | Smithfield | Mack | Richmond

4600 4480

4526 4529 4570 4615 4602 4528 4514 4502 4607 4521

-44 +.50 +.60 +1.80 -.72 +1.69 -.30 -2.00 +1.75 -1.50 +1.85 -2.00 +1.90

22 Cars 19 Cars 22 Cars

12 Cars 8C 4 Cars 6 Cars 6 Cars

22 Cars 22 Cars

18 Cars 19 Cars

12 Cars 12C 5 Cars 5 Cars

70 71 72 73 74 75 76 77 78 79 80 81 82

Sheet
2 of 8

Harrills

Sugarhill

Lawnsbury

Fairmead

Beckshead

Pre-Sch

4600

-2.00

+1.40

+4.41

+2.00

+.40

22 Cars

19 Cars

15 Cars

12 Cars

6 Cars

5 Cars

22 Cars

12 Cars

(Plaintiff's Exhibit No. 15, offered and received in evidence, is in words and figures as follows:)

Number of Passenger Trains, Passenger Buses and Freight Trains Operated Over the Utah Idaho Central Railroad—Years 1933, 1934, 1935 and the Average Number Operated Daily.

| | 1932 | | | Daily Average | | | 1933 | | | Daily Average | | | 1934 | | | Daily Average | | | 1935 | | | Daily Average | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Pagr. Trns. | Pagr. Buses | Frt. Trns. | Pagr. Trns. | Pagr. Buses | Frt. Trns. | Pagr. Trns. | Pagr. Buses | Frt. Trns. | Pagr. Trns. | Pagr. Buses | Frt. Trns. | Pagr. Trns. | Pagr. Buses | Frt. Trns. | Pagr. Trns. | Pagr. Buses | Frt. Trns. | Pagr. Trns. | Pagr. Buses | Frt. Trns. | Pagr. Trns. | Pagr. Buses | Frt. Trns. |
| January | 330 | 121 | 180 | 10.6 | 3.9 | 5.8 | 424 | 120 | 176 | 13.7 | 3.9 | 5.7 | 370 | 122 | 179 | 11.9 | 3.9 | 5.8 | 338 | 131 | 206 | 10.9 | 4.2 | 6.6 |
| February | 312 | 114 | 200 | 10.8 | 3.9 | 6.9 | 332 | 152 | 237 | 11.9 | 5.4 | 8.5 | 325 | 113 | 139 | 11.6 | 4.0 | 5.0 | 295 | 118 | 174 | 10.5 | 4.2 | 6.2 |
| March | 331 | 127 | 192 | 10.7 | 4.1 | 6.2 | 456 | 128 | 206 | 14.7 | 4.1 | 6.6 | 370 | 130 | 136 | 11.9 | 4.2 | 4.4 | 329 | 128 | 219 | 10.6 | 4.1 | 7.1 |
| April | 315 | 130 | 146 | 10.5 | 4.3 | 4.9 | 431 | 120 | 235 | 14.4 | 4.0 | 7.8 | 361 | 120 | 140 | 12.0 | 4.0 | 4.7 | 324 | 127 | 188 | 10.8 | 4.2 | 6.3 |
| May | 274 | 125 | 113 | 8.8 | 4.0 | 3.6 | 408 | 142 | 223 | 13.2 | 4.6 | 7.2 | 345 | 125 | 148 | 11.1 | 4.0 | 4.8 | 320 | 128 | 139 | 10.3 | 4.1 | 4.5 |
| June | 292 | 121 | 116 | 9.7 | 4.0 | 3.9 | 206 | 240 | 247 | 6.9 | 8.0 | 8.2 | 330 | 120 | 208 | 11.0 | 4.0 | 6.9 | 225 | 122 | 158 | 7.5 | 4.1 | 5.3 |
| July | 250 | 126 | 145 | 8.1 | 4.1 | 4.7 | 221 | 256 | 199 | 7.1 | 8.3 | 6.4 | 332 | 126 | 220 | 10.7 | 4.1 | 7.1 | 226 | 130 | 247 | 7.3 | 4.2 | 8.0 |
| August | 242 | 135 | 180 | 7.8 | 4.4 | 5.8 | 213 | 250 | 313 | 6.9 | 8.1 | 10.0 | 346 | 128 | 323 | 11.2 | 4.1 | 10.4 | 213 | 128 | 260 | 6.9 | 4.1 | 8.4 |
| September | 270 | 122 | 251 | 9.0 | 4.1 | 8.4 | 234 | 228 | 428 | 7.8 | 7.6 | 14.2 | 346 | 133 | 260 | 11.5 | 4.4 | 8.7 | 297 | 123 | 321 | 9.9 | 4.1 | 10.7 |
| October | 299 | 124 | 349 | 9.7 | 4.0 | 11.3 | 365 | 137 | 401 | 11.7 | 4.4 | 12.9 | 358 | 133 | 454 | 11.5 | 4.3 | 14.7 | 316 | 133 | 398 | 10.2 | 4.3 | 12.8 |
| November | 314 | 122 | 251 | 10.4 | 4.1 | 8.4 | 348 | 127 | 375 | 11.6 | 4.2 | 12.5 | 349 | 129 | 328 | 11.6 | 4.3 | 10.9 | 313 | 125 | 349 | 10.4 | 4.2 | 11.6 |
| December | 326 | 124 | 284 | 10.5 | 4.0 | 9.2 | 359 | 131 | 266 | 11.6 | 4.2 | 8.6 | 364 | 133 | 284 | 11.7 | 4.3 | 9.2 | 321 | 137 | 190 | 10.4 | 4.4 | 6.1 |
| Total | 3555 | 1491 | 2407 | | | | 3997 | 2031 | 3306 | | | | 4196 | 1512 | 2819 | | | | 3517 | 1530 | 2849 | | | |
| Average daily trains operated over a period of 12 months | | | | 9.7 | 4.1 | 6.6 | | | | 11.0 | 5.6 | 9.1 | | | | 11.5 | 4.1 | 7.7 | | | | 9.6 | 4.2 | 7.8 |

| Distance From Ogden Miles | | Distance from Preceding Station Miles | | Population Town and Cities |
|---|---|---|---|---|
| 35 | Pioneer | F | ½ | |
| 36 | Dewey | | 1 | 275 |
| 38 | Beaton | F | 2 | |
| 40 | Collinston | F | 2 | |
| | | "(2) | | |
| 41 | Ukon | F | 1 | |
| 43 | Beaver Dam | F | 2 | |
| 45 | Summit | F | 2 | |
| 45½ | Kidman | F | ½ | |
| 46 | Farrell | F | ½ | |
| 48 | Petersboro | F | 1 | |
| 51 | Mendon | F | 3 | 434 |
| 52 | Rondo | F | 1 | |
| 53 | Darley | F | 1 | |
| 56 | Wellsville | | 3 | 1271 |
| 59 | Hills | F | 3 | |
| 60 | West Hyrum | F | 1 | |
| 61 | Hyrum | | 1 | 1869 |
| 63 | Anderson | F | 2 | |
| 64 | Millville | | 1 | 403 |
| 64½ | Humphries | F | ½ | |
| 66 | Providence | | 1½ | 1088 |
| 67 | South Logan | F | 1 | |
| 68 | Logan | | 1 | 9979 |
| 69 | Logan 2nd North | F | 1 | |
| 70 | Greenville | F | 1 | |
| 73 | Hyde Park | F | 3 | 723 |
| 74 | South Smithfield | F | 1 | |
| 75 | Smithfield | | 1 | 2353 |
| 75½ | Smithfield 4th No. | F | ½ | |

352 (Plaintiff's Exhibit No. 16, offered and received in evidence, is in words and figures as follows:)

"Passenger stations on The Utah Idaho Central Railroad Company showing mileage from Ogden—Mileage as between Stations and population of towns and Cities.

| Distance From Ogden Miles | | Distance from Preceding Station Miles | | Population Town and Cities |
|---|---|---|---|---|
| 0 | Ogden Station | | | 40272 |
| 1 | Ogden 12th Street | | 1 | |
| 2 | Broom | F | 1 | |
| 3 | Browning | F | 1 | |
| 5 | Harrisville | F | ½ | |
| 7 | Midway | F | 2 | |
| 8 | View | F | 1 | |
| 8½ | Clayte | F | ½ | |
| 9 | Hot Springs | F | ½ | |
| 11 | Nerva | F | 2 | |
| 14 | Willard | | 3 | 561 |
| 16 | Wood | F | 2 | |
| 17 | South Perry | F | 1 | |
| 17½ | Perry | F | ½ | |
| 18 | Davis | F | ½ | |
| 20 | South Brigham | F | 2 | |
| 21 | Brigham | | 1 | 5093 |
| 22 | North Brigham | F | 1 | |
| 24 | Bristol | F | 2 | |
| 28 | Harper | F | 3 | |
| 29 | Calls Fort | F | 2 | |
| 31 | Honeyville | | 2 | 494 |
| 32 | Crystal Springs | F | 1 | |
| 33 | Madsen | F | 1 | |
| 34½ | Hunsaker | F | 1½ | |

| Distance From Ogden Miles | | Distance from Preceding Station Miles | | Population Town and Cities |
|---|---|---|---|---|
| 78 | Mack | F | 2½ | |
| 79 | Carsons | F | 1 | |
| 80 | Emepy | F | 1 | |
| 80½ | North Cache High | F | ½ | |
| 81 | Richmond | | ½ | 1140 |
| 82 | Burt | F | 1½ | |
| 83 | Merrills | | ½ | |
| 85 | Sugarton | F | 2 | |
| 87 | Lewiston | | 2 | 1783 |
| 87½ | Idaline | F | ½ | |
| 89 | Fairview | F | 1½ | |
| 92 | Whitney | F | 3 | |
| 93 | Beckstead | F | 1 | |
| 95 | Preston | | 2 | 3381 |
| | Plain City Branch | | | |
| 5 | Harrisville | F | 2 | |
| 7 | Farr West | F | 2 | |
| 9 | Poplar | F | 2 | |
| 10 | Plain City | | 1 | 806 |
| 12 | Warren | | 2 | 293 |

"Note 1:—"F" Denotes Flag Stops

" 2:—Distance shown to nearest Mile.

"73 Passenger Stops M 107 Miles of Road"

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(Plaintiff's Exhibit No. 17, offered and received in evidence, is in words and figures as follows:)

"Statement of Passengers handled by The Utah Idaho Central Railroad Company—Amount of Passenger, Revenue and average fare per passenger years 1931-1932-1933-1934-1935.

| Year | 1931 | 1932 | 1933 | 1934 | 1935 |
|---|---|---|---|---|---|
| Passengers handled | 489,650 | 407,507 | 366,442 | 408,634 | 400,240 |
| Passenger Revenue | $89,632.57 | $67,410.45 | $61,420.99 | $61,346.25 | $64,447.15 |
| Average fare per passenger | 18.3c | 16.5c | 16.8c | 14.0c | 16.1c" |

(Plaintiff's Exhibit No. 18, offered and received in evidence, is in words and figures as follows:)

"Statement of Passengers Handled by The Utah Idaho Central Railroad Company—as between regular passengers and school students for the years 1931, 1932, 1933, 1934 & 1935.

| Year | 1931 | 1932 | 1933 | 1934 | 1935 |
|---|---|---|---|---|---|
| Regular Passengers | 279,160 | 222,353 | 192,063 | 233,035 | 210,608 |
| School Students | 210,490 | 185,154 | 174,379 | 175,599 | 189,632 |
| | 489,650 | 407,507 | 366,442 | 408,634 | 400,240" |

## Exhibit 19 (Abstracted)

357 The capacity of sidings (based upon 50 ft. per car) on various steam railroads operating out of Utah for approximately 200 miles from Utah Terminal as reflected by their official time tables is shown by the following table:

| Name of Railroad | Average Car Capacity | Maximum Car Capacity | Minimum Car Capacity | Comment |
|---|---|---|---|---|
| Salt Lake & Los Angeles | 87 | 150 | 6 | 3 out of 42 sidings have capacity of less than 63 cars |
| Southern Pacific | 114 | 225 | 10 | 3 out of 41 sidings have capacity of less than 51 cars |
| Oregon Short Line | 86 | 228 | 23 | 2 out of 40 sidings have capacity of less than 54 cars |
| Union Pacific | 109 | 318 | 32 | 1 out of 34 sidings have capacity of less than 52 cars |
| Denver & Rio Grande Western | 86 | 121 | 20 | 2 out of 35 sidings have capacity of less than 59 cars |

(Plaintiff's Exhibit No. 20, offered and received in evidence, is in words and figures as follows:)

"Selected Operating Statistics of Steam Railroads Connecting With the Utah Idaho Central Railroad, Also Same Information for that Company, Designed to Show the Relative Size of Train and Also the Labor Cost Per Car Mile for Enginemen and Trainmen.

| | Union Pacific Railroad | | | | |
|---|---|---|---|---|---|
| | 1931 | 1932 | 1933 | 1934 | 1935 |
| Freight Train Miles | 9,855,627 | 8,309,123 | 7,776,668 | 9,469,762 | 10,301,087 |
| Freight Car Miles | 644,153,521 | 522,799,614 | 502,271,910 | 596,712,012 | 621,146,351 |
| Wages Enginemen & Train, Freight | $4,093,150.15 | $3,089,245.70 | $2,806,236.65 | $3,374,874.03 | $4,010,9[illegible]8.00 |
| Freight Car Miles per Train Mile | 65.4 | 62.9 | 64.6 | 63.0 | 60.3 |
| Cost Enginemen & Trainmen per car mile, Freight | .64c | .59c | .56c | .57c | .65c |
| Passenger Train Miles | 8,654,405 | 6,582,035 | 4,667,849 | 5,169,524 | 6,282,899 |
| Passenger Car Miles | 81,059,247 | 65,207,658 | 49,656,447 | 55,879,460 | 67,035,563 |
| Wages Enginemen & Trainmen, Passenger | $2,546,783.41 | $1,831,748.38 | $1,315,846.89 | $1,478,304.91 | $1,916,198.00 |
| Passenger Car Miles per Train Mile | 9.4 | 9.9 | 10.6 | 10.8 | 10.7 |
| Cost of Enginemen & Trainmen per car mile, Passenger | 3.14c | 2.81c | 2.65c | 2.64c | 2.86c |

| | Oregon Short Line Railroad | | | | |
|---|---|---|---|---|---|
| Freight Train Miles | 2,791,071 | 2,287,647 | 2,376,445 | 2,649,074 | 3,195,575 |
| Freight Car Miles | 141,787,335 | 106,925,867 | 113,762,118 | 130,813,098 | 153,445,370 |
| Wages Enginemen & Trainmen, Freight | $1,361,557.16 | $1,044,837.68 | $1,105,683.68 | $1,200,160.19 | $1,548,847.00 |
| Freight Car Miles per train Mile | 50.8 | 46.7 | 47.9 | 49.4 | 48.0 |
| Cost of Enginemen & Trainmen per car mile, Freight | .96c | .98c | .97c | .92c | 1.01c |
| Passenger Train Miles | 2,573,865 | 2,151,307 | 1,805,750 | 1,805,750 | 1,940,954 |
| Passenger Car Miles | 19,118,720 | 15,679,201 | 12,885,936 | 13,531,729 | 16,714,927 |
| Wages Trainmen & Enginemen, Passenger | $760,911.24 | $581,932.88 | $[illegible],944.88 | $506,218.17 | $627,548.00 |
| Passenger Car Miles per Train Mile | 7.4 | 7.3 | 7.1 | 7.7 | 8.6 |
| Cost of Enginemen & Trainmen per Passenger, Car Mile | 3.98c | 3.71c | 3.94c | 3.74c | 3.75c |

## Los Angeles Salt Lake Railroad

| | 1931 | 1932 | 1933 | 1934 | 1935 |
|---|---|---|---|---|---|
| Freight Train Miles | 1,904,326 | 1,722,495 | 1,659,589 | 1,825,467 | 1,870,959 |
| Freight Car Miles | 89,759,842 | 78,009,337 | 73,898,950 | 87,568,288 | 90,413,606 |
| Wages Enginemen & Trainmen, Freight | $1,089,722.00 | $898,778.85 | $842,968.83 | $980,740.24 | $1,090,670.00 |
| Freight Car Miles per Train Mile | 47.1 | 45.3 | 44.5 | 48.0 | 48.3 |
| Cost of Enginemen & Trainmen per Car Mile, Freight | 1.21c | 1.15c | 1.14c | 1.12c | 1.21c |
| Passenger Train Miles | 1,978,605 | 1,783,448 | 1,262,793 | 1,224,801 | 1,562,232 |
| Passenger Car Miles | 19,929,630 | 18,039,699 | 12,372,147 | 13,448,610 | 16,662,751 |
| Wages Enginemen & Trainmen, Passenger | $651,668.20 | $538,869.78 | $382,094.97 | $380,911.79 | $537,086.00 |
| Passenger Car Miles per Train Mile | 10.1 | 10.1 | 9.8 | 11.0 | 10.7 |
| Wages of Enginemen & Trainmen per Car, Mile Psngr. | 3.27c | 2.98c | 3.09c | 2.88c | 3.22c |

Southern Pacific Company

| | | | | | |
|---|---|---|---|---|---|
| Freight Train Miles | 13,100,586 | 11,351,367 | 10,489,421 | 12,084,100 | 13,202,755 |
| Freight Car Miles | 714,692,159 | 600,579,575 | 568,910,411 | 678,325,266 | 747,046,856 |
| Wages Enginemen & Trainmen, Freight | $8,231,907.30 | $6,171,938.68 | $5,680,595.06 | $6,963,905.99 | $8,084,150.00 |
| Freight Car Miles per Train mile | 54.6 | 52.9 | 54.2 | 56.1 | 56.6 |
| Cost of Enginemen & Trainmen per car Mile, Freight | 1.15c | 1.03c | 1.0c | 1.03c | 1.08c |
| Passenger Train Miles | 14,647,892 | 12,057,287 | 10,337,537 | 10,810,580 | 11,370,473 |
| Passenger Car Miles | 138,925,149 | 113,796,202 | 97,075,384 | 108,174,016 | 116,853,430 |
| Wages Enginemen & Trainmen, Passenger | $4,907,315.22 | $3,720,376.18 | $3,161,475.11 | $3,392,286.14 | $3,881,916.00 |
| Passenger Car Miles per Train Mile | 9.5 | 9.4 | 9.4 | 10.0 | 10.3 |
| Cost Enginemen & Trainmen per car mile, Pssgr. | 3.53c | 3.27c | 3.26c | 3.14c | 3.32c |

(Denver & Rio Grande R. R.)

| | 1931 | 1932 | 1933 | 1934 | 1935 |
|---|---|---|---|---|---|
| Freight Train Miles | 2,593,844 | 2,196,516 | 2,244,221 | 2,726,435 | 2,904,163 |
| Freight Car Miles | 125,165,936 | 104,438,476 | 109,089,678 | 123,098,542 | 123,042,105 |
| Wages of Enginemen & Trainmen, Freight | $1,460,434.00 | $1,105,721.22 | $1,128,056.00 | $1,357,836.68 | $1,572,955.00 |
| Freight car Miles per Train Mile | 48.2 | 47.5 | 48.6 | 45.1 | 42.4 |
| Cost Enginemen & Train men per Car Mile, Freight | 1.17c | 1.06c | 1.03c | 1.10c | 1.28c |
| Passenger Train Miles | 2,190,749 | 1,961,008 | 1,621,911 | 1,794,616 | 2,025,460 |
| Passenger Car Miles | 15,094,881 | 12,161,945 | 10,944,053 | 12,475,334 | 14,489,787 |
| Wages Enginemen & Trainmen, Passenger | $617,907.44 | $488,470.52 | $406,618.77 | $464,699.42 | $563,933.00 |
| Passenger car Miles per Train Mile | 6.9 | 6.2 | 6.7 | 7.0 | 7.2 |
| Cost of Enginemen & Trainmen per Car Mile, Passenger | 4.09c | 4.02c | 3.72c | 3.72c | 3.89c |

"(4)

"The Utah Idaho Central Railroad Company

| | | | | | |
|---|---|---|---|---|---|
| Freight Train Miles | 170,901 | 151,250 | 180,962 | 170,665 | 165,900 |
| Freight Car Miles | 999,985 | 946,868 | 1,018,209 | 1,064,334 | 1,083,650 |
| Wages Enginemen & Trainmen, Freight | $30,979.79 | $25,900.50 | $27,975.64 | $27,618.96 | $27,077.71 |
| Freight Car Miles per Train Mile | 5.9 | 6.3 | 5.6 | 6.2 | 6.5 |
| Cost of Enginemen & Trainmen per car mile, Freight | 3.1c | 2.74c | 2.75c | 2.59c | 2.50c |
| Passenger Train Miles | 278,930 | 259,505 | 228,041 | 204,023 | 199,045 |
| Passenger Car Miles | 359,866 | 298,868 | 253,224 | 225,808 | 223,216 |
| Wages Enginemen & Trainmen, Passenger | $15,242.88 | $14,071.54 | $11,430.26 | $11,538.74 | $10,837.22 |
| Passenger Car Miles per Train Mile | 1.3 | 1.2 | 1.1 | 1.1 | 1.1 |
| Cost Enginemen & Trainmen per car Miles, Pssgr. | 4.24c | 4.71c | 4.51c | 5.1c | 4.9c |

"Note—: These statistics include the direct mileage and cost allocation to passenger and freight
369 service obtained from reports on file with the Public Service Commission of Utah."

(Plaintiff's Exhibit No. 21, offered and received in evidence, is in words and figures as follows:)

"Comparison of Selected Operating Statistics on the Chicago, Milwaukee, St. Paul & Pacific Railroad, designed to show the relative size of train as between its Steam Operation and its Electrified Operation, for the years 1929-1931-1932-1933, and also for the year 1929 the relative labor cost for enginemen and trainmen per car mile as between its steam operation and its electrified operation.

461 Ex. 21 462

Steam Operation

| | 1929 | 1931 | 1932 | 1933 |
|---|---|---|---|---|
| Freight Train Miles | 19,682,830 | 15,219,067 | 12,838,943 | 12,570,230 |
| Freight Car Miles | 901,023,843 | 662,471,816 | 517,058,538 | 527,665,023 |
| Wages Enginemen & Trainmen, Freight | $10,437,859.00 | | | |
| Freight Car Miles per train mile | 45.8 | 43.5 | 40.3 | 42.0 |
| Cost of Enginemen & Trainmen per car mile, Freight | 1.16c | | | |
| Passenger Train Miles | 15,443,977 | 12,160,183 | 10,958,116 | 10,266,505 |
| Passenger Car Miles | 98,807,422 | 72,532,713 | 63,618,949 | 60,516,652 |
| Wages Enginemen & Trainmen, Passenger | $4,521,131.00 | | | |

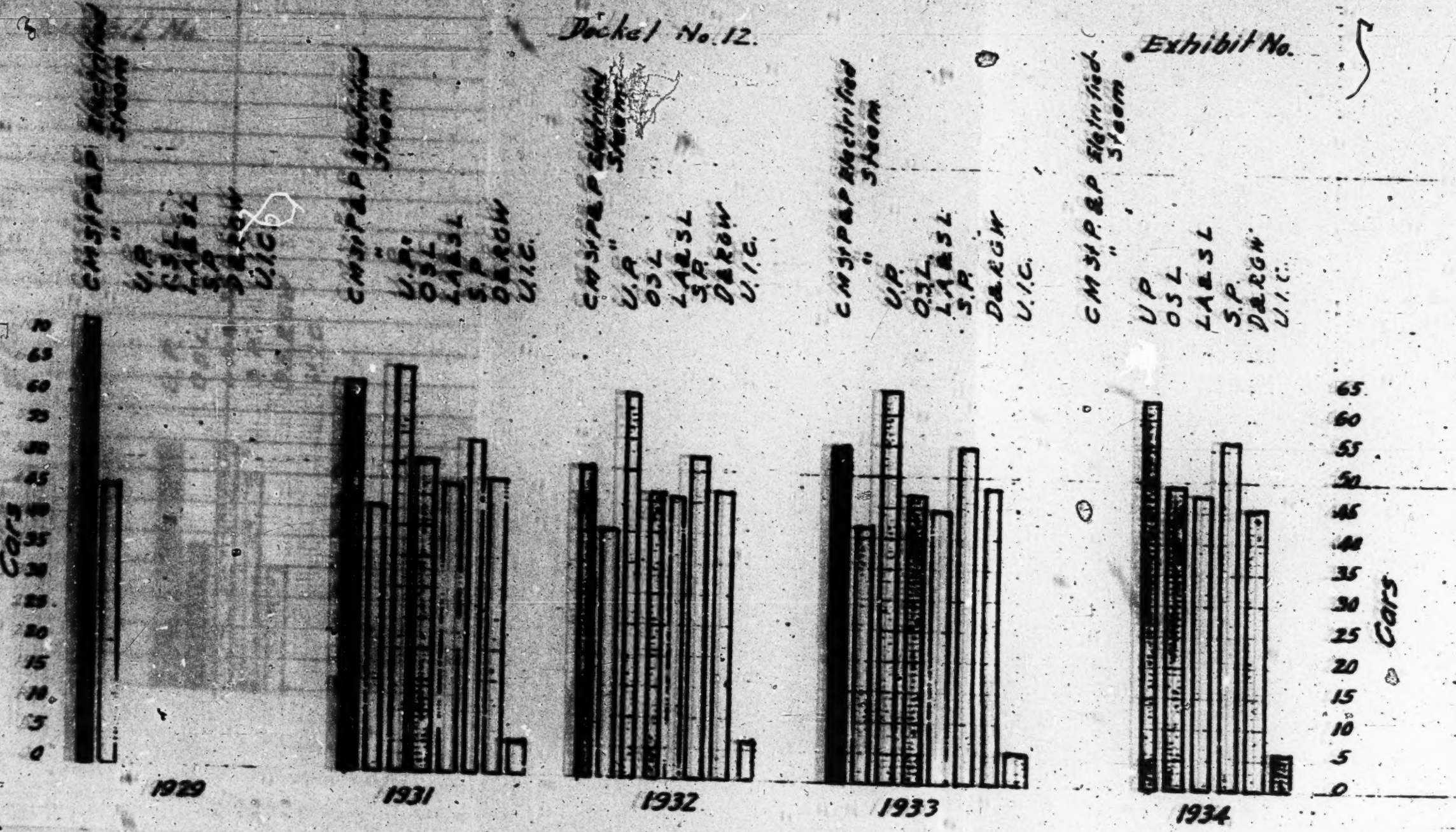
| | | | | |
|---|---|---|---|---|
| Passenger Car Miles per train mile | 6.0 | 6.0 | 5.8 | 5.9 |
| Cost of Enginemen & Trainmen per car mile, Passenger | 4.82c | | | |
| | Electrified Operation | | | |
| Freight Train Miles | 882,264 | 586,032 | 513,319 | 523,238 |
| Freight Car Miles | 64,054,929 | 37,323,057 | 26,029,362 | 28,359,930 |
| Wages Enginemen & Trainmen, Freight | $649,724.00 | | | |
| Freight Car Miles per Train Mile | 72.6 | 63.7 | 50.8 | 54.2 |
| Cost of Enginemen & Trainmen per car mile, Freight | 1.01c | | | |
| Passenger Train Miles | 1,016,939 | 810,257 | 513,790 | 501,741 |
| Passenger Car Miles | 10,300,341 | 6,949,061 | 5,440,642 | 5,491,323 |
| Wages Enginemen & Trainmen, Passenger | $317,317.00 | | | |
| Passenger Car Mile per Train Mile | 10.1 | 8.6 | 10.6 | 10.9" |
| Cost of Enginemen & Trainmen per car mile, Passenger | 3.08c | | | |

Exhibit No. 22.

Before the Interstate Commerce Commission Re Railway Labor Act

Docket No. 12.

Exhibit No. 5




Freight Car Miles per Train Mile or Average Cars per Train

371½

Docket No. 33

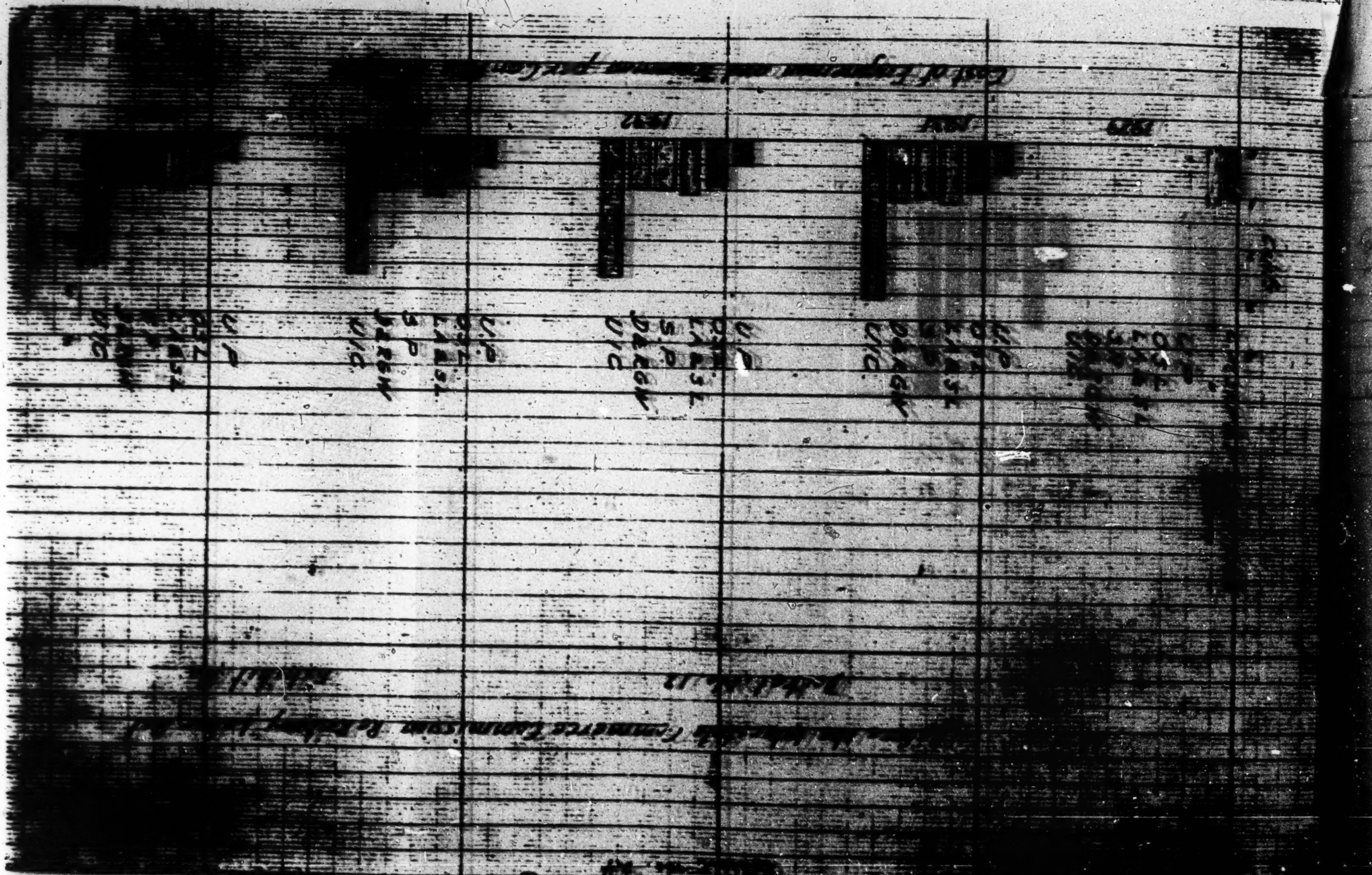
Interstate Commerce Commission Re Railway Labor Act

Exhibit No. 12

Exhibit No.




Passenger Car Miles per Train Mile or Average Cars per Train



Cost Engineer and Trainman per Car Mile Passenger

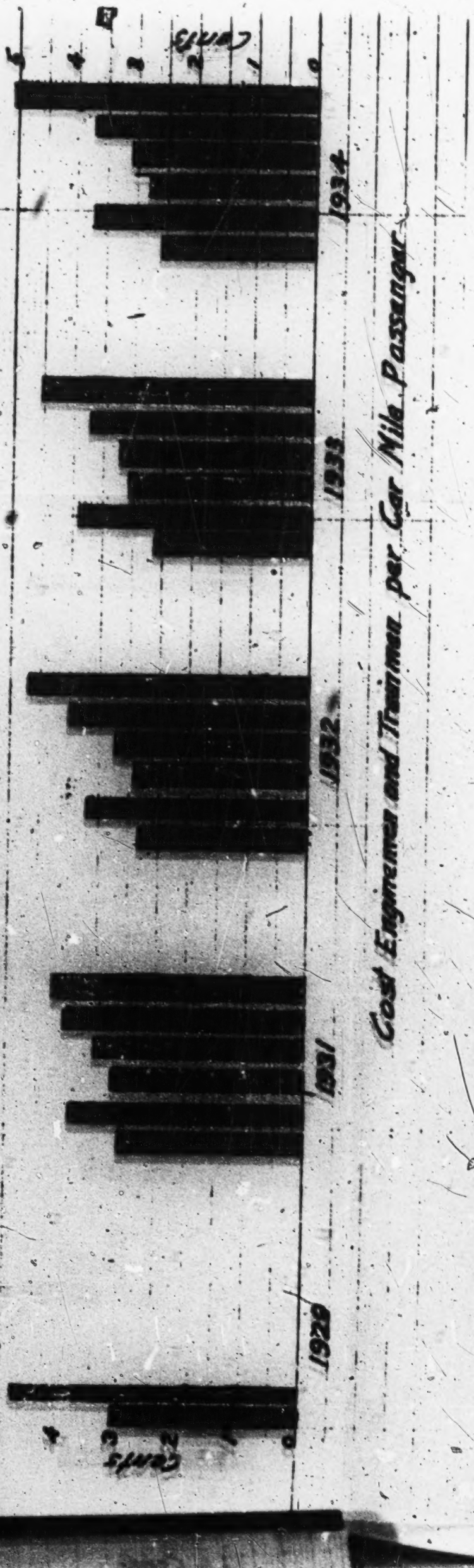



Exhibit No
Railway Exp.

Before the Mississippi Commerce Commission
Docket No 12

Cmte Exhibit No

(Plaintiffs Exhibit No. 26, offered and received in evi
is in words and figures as follows:)

"June 29, 19

372 "Dear Sir:

"Pursuant to the recommendation of the Regional
rector, the Utah, Idaho Central Railroad is relinquished
Federal control.

"It will be the policy of the Railroad Administration
operate with relinquished roads as to a fair division of
rates, car supply, and, as far as may be consistent with the
tional needs, that there be no undue discrimination as to
ing

"If you feel that hardship may result from relinqui
and desire to make a contract on fair terms, right is re
to consider the advisability of making such a contract.

"Very truly yours,

"Mr. M. S. Browning,
President, Utah, Idaho Central Railroad,
Ogden, Utah."

...n Railway Labor Act )
Docket 12 )

## BEFORE THE INTERSTATE COMMERCE COMMISSION

### Statement of Revenues on The Utah Idaho Central Railroad Company
### 19 year period 1916 to 1934 inclusive

| | 1916 | 1917 | 1918 | 1919 | 1920 | 1921 | 1922 | 1923 | 1924 | 1925 | 1926 | 1927 | 1928 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ...nger Revenue | *246,171.72 | *278,336.83 | *251,844.52 | *373,071.65 | 448,184.01 | 387,691.52 | 347,517.26 | 328,066.60 | 288,219.82 | 244,605.97 | 211,763.20 | 178,175.39 | 161,688.76 |
| ...ggg. Revenue | 4,556.64 | 1,007.27 | 289.29 | 1,296.18 | 1,329.73 | 1,417.87 | 1,335.19 | 1,411.61 | 1,365.85 | 1,126.78 | 984.91 | 966.91 | 763.60 |
| ...l Revenue | 449.88 | 451.26 | 354.52 | 1,396.55 | 1,473.48 | 1,473.48 | 1,473.48 | 1,843.92 | 2,108.52 | 2,173.63 | 2,441.44 | 2,413.41 | 2,413.41 |
| ...press Revenue | 8,952.39 | 11,742.41 | 13,125.46 | 23,196.49 | 38,062.16 | 17,093.46 | 27,324.73 | 23,873.65 | 20,521.91 | 18,804.14 | 18,137.67 | 17,642.71 | 15,917.71 |
| ...lk Revenue Frt. | 5,322.46 | 11,165.08 | 12,448.80 | 15,117.91 | 13,693.75 | 11,058.33 | 10,765.44 | 18,074.75 | 20,707.11 | 19,762.69 | 19,063.00 | 14,364.25 | 13,846.04 |
| ...ght Revenue | 173,962.46 | 255,309.41 | 295,518.19 | 408,610.56 | 506,001.97 | 463,316.15 | 375,383.98 | 413,449.41 | 460,620.14 | 459,995.64 | 428,914.70 | 493,562.82 | 526,516.72 |
| ...itching Revenue | 156.75 | 617.00 | 2,410.00 | 2,719.00 | 814.25 | 1,148.00 | 323.30 | 9.45 | | | | | |
| ...ed. Transpn. Rev. | | | 23.89 | | 3.05 | | | | | | | | |
| Total Rev. from Transpn. | 439,592.30 | 559,129.26 | 576,614.67 | 826,312.34 | 1,009,562.40 | 883,193.81 | 764,123.38 | 786,729.39 | 783,543.35 | 746,468.85 | 680,707.93 | 707,125.49 | 721,126.24 |
| ...venue from Other Ry. Opr. | 7,400.10 | 20,857.43 | 29,827.05 | 26,439.84 | 46,438.63 | 49,066.09 | 57,561.17 | 51,771.22 | 35,295.98 | 38,801.18 | 38,645.41 | 61,440.93 | 61,798.61 |
| Total Operating Revenue | 446,992.40 | 579,986.69 | 606,441.72 | 852,752.18 | 1,056,001.03 | 932,259.90 | 821,684.55 | 838,500.61 | 768,839.33 | 785,270.03 | 719,353.34 | 768,566.42 | 782,924.85 |

* Does not include street car revenues of what is now The Utah Rapid Transit Company

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BEFORE THE INTERSTATE COMMERCE COMMISSION

Exhibit No. 28

Statement of Revenues on The Utah Idaho Central Railroad Company
19 year period 1916 to 1934 inclusive

| | 1921 | 1922 | 1923 | 1924 | 1925 | 1926 | 1927 | 1928 | 1929 | 1930 | 1931 | 1932 | 1933 | 1934 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 357,691.52 | 347,517.36 | 325,000.00 | 308,719.52 | 304,026.07 | 211,703.20 | 173,175.39 | 161,698.76 | 146,564.60 | 115,545.02 | 99,632.57 | 67,410.45 | 61,429.99 | 61,346.25 |
| | 1,417.57 | 1,335.19 | 1,411.61 | 1,305.55 | 1,178.78 | 924.92 | 986.01 | 703.60 | 517.95 | 304.94 | 294.89 | 105.43 | 41.43 | 32.48 |
| | 1,473.48 | 1,473.48 | 1,943.93 | 2,108.32 | 2,173.68 | 2,444.44 | 2,413.41 | 2,413.41 | 2,616.64 | 2,660.35 | 2,657.32 | 2,660.35 | 2,660.37 | 2,660.33 |
| | 17,000.46 | 27,334.73 | 25,378.65 | 20,321.91 | 16,304.14 | 18,127.67 | 17,642.71 | 18,917.71 | 16,496.93 | 13,796.55 | 8,690.51 | 5,990.96 | 5,162.95 | 5,981.50 |
| | 11,958.33 | 10,765.44 | 10,874.— | 20,[illegible] | 10,702.60 | 10,952.09 | 14,364.25 | 13,948.04 | 4,336.20 | 9,753.06 | 4,334.20 | — | 2,900.58 | — |
| | 463,316.15 | 375,353.96 | 422,400.41 | 400,620.14 | 439,305.04 | 428,314.79 | 400,582.52 | 338,536.72 | 400,455.81 | 405,421.41 | 396,357.20 | 372,474.35 | 391,718.19 | 378,994.25 |
| | 1,143.00 | 322.20 | 9.45 | | | | | | | | | | | |
| | 853,198.51 | 764,122.36 | 788,720.39 | 733,543.35 | 744,462.85 | 680,707.53 | 707,125.49 | 721,126.24 | 630,986.68 | 607,512.24 | 501,756.68 | 448,641.56 | 463,813.51 | 448,911.81 |
| | 49,866.69 | 57,661.17 | 51,771.22 | 35,395.98 | 39,501.18 | 36,645.41 | 61,449.93 | 61,796.61 | 65,654.69 | 52,390.69 | 45,570.37 | 30,775.49 | 31,353.96 | 33,361.00 |
| | 902,359.20 | 821,884.53 | 840,888.61 | 768,939.33 | 783,370.03 | 719,353.24 | 768,584.42 | 782,924.85 | 713,936.32 | 659,902.33 | 580,657.05 | 479,417.05 | 495,167.47 | 482,272.81 |

(Plaintiff's Exhibit No. 27, offered and received in evidence, is in words and figures as follows:)

"Chronological history of existing labor agreements between The Utah Idaho Central Railroad Company including its predecessor companies and various crafts of employees.

"Agreement with Division 418—Amalgamated Association of Street and Electric Railway Employees and Coach Operators of America (an affiliate of The American Federation of Labor)

"This agreement includes trainmen, shopmen, barnmen, and substation operators.

1st Agreement effective May 25, 1909, expired May 15, 1911.

2nd Agreement effective May 15, 1911, expired May 15, 1913.

3rd Agreement effective May 15, 1913, expired June 1, 1917.

4th Agreement effective June 1, 1917, expired June 1, 1919.

5th Agreement effective June 1, 1919, expired June 1, 1920.

6th Agreement effective June 1, 1920, expired June 1, 1930.

"Above agreement amended June 1st, 1931.

"Above agreement amended June 1st, 1922.

"Above agreement amended June 1st, 1924.

"Above agreement amended June 1st, 1926.

7th Agreement effective June 1st, 1930, expired June 1st, 1931.

"Above agreement amended Sept. 16, 1931.

8th Agreement effective June 1, 1931, expired June 1, 1933.

"Above agreement amended June 1st, 1932.

9th Agreement effective June 1st, 1933, and still in effect.

"Above agreement amended Oct. 17, 1933.

374 "Above agreement amended June 1, 1934.

"Above agreement amended June 1, 1935.

10th Agreement with Shopmen, Barnmen and Substation Operators effective June 1, 1936 and expiring June 1, 1941.

"Agreement with the Station Employees Association 1st Agreement effective May 1, 1934, and still in effect.

"Above agreement amended May 1, 1935.

2nd Agreement effective May 1, 1936, expiring May 1, 1941.

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## Exhibits 27-1, 27-2, 27-3 (Abstracted)

Exhibit 27-1 is an agreement by and between the Utah Idaho Central Railroad Company and the Station Employees Association of the Utah Idaho Central Railroad Company, representing all persons employed in station service on the carrier's lines. The agreement covers such matters as rates of pay, hours, seniority and working conditions. The agreement is to run from May 1, 1936, to May 1, 1941, and from year to year thereafter.

Exhibit 27-2 is an agreement between the Utah Idaho Central Railroad Company and the Employees of the Electrical and Mechanical Department, represented by a committee of their own choosing. This agreement covers the same subjects as Exhibit 27-1. The agreement is to run from June 1, 1936, to June 1, 1941, and from year to year thereafter.

Exhibit 27-3 is an agreement between the Utah Idaho Central Railroad Company and Division 418, Amalgamated Association of Street and Electric Railway Employees and Coach Operators of America, representing the motormen, conductors, trainmen, trolleymen, motor coach operators, shopmen, barnmen, and sub-station operators on the Utah Idaho Central Railroad. The agreement covers the same subjects as Exhibit 27-1. The original agreement ran from June 1, 1934 to June 1, 1935, and from year to year thereafter. By amendments, included in Exhibit 27-3, the agreement was extended to June 1, 1936.

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(Plaintiff's Exhibit No. 28, offered and received in evidence, is in words and figures as follows:)

"The Utah Idaho Central Railroad Company Condensed Income Statement

Years 1930 to 1935 incl.

| | 1930 | 1931 | 1932 | 1933 | 1934 | 1935 |
|---|---|---|---|---|---|---|
| Operating Revenue | 659,802.33 | 550.657.05 | 479,417.05 | 495,167.47 | 482,272.81 | 514,562.45 |
| Operating Expenses | 518,773.13 | 450,201.48 | 380,928.55 | [illegible]0,521.83 | 364,993.86 | 367,846.48 |
| Net Opr. Revenue | 141,029.20 | 100,455.57 | 98,488.50 | 124,645.64 | 117,278.95 | 146,[illegible]5.97 |
| Taxes | 48,861.46 | 45,142.66 | 42,312.80 | 39,457.48 | 39,392.82 | 40,473.26 |
| Operating Income | 92,167.74 | 55,312.91 | 56,175.70 | 85,188.16 | 77,886.13 | 106,242.71 |
| Other Income | 126.00 | 165.75 | 37.08 | 19.44 | 60.57 | 4.00 |
| Gross Income | 92,293.74 | 55,478.66 | 56,212.78 | 85,207.60 | 77,946.70 | 106,246.71 |
| Income deductions | 124,317.29 | 123,971.18 | 123,590.85 | 122,340.12 | 124,826.91 | 124,183.69 |
| Net Income | -32,023.55 | -68,492.52 | -67,378.07 | -37,132.52 | -46,880.21 | -17,936.98" |

Figures preceded by (1) are red in original exhibit. [illegible]

Re. Railway Labor Act )
Docket #12 )

Delivered on U. I. C.

EXHIBIT NO. 28
Sheet No. 1

BEFORE THE INTERSTATE COMMERCE COMMISSION

Statement of Carload Business Handled by The Utah Idaho Central Railroad Company, Six Months Period July 1, 1934 to December 31, 1934

Showing Received Business by Commodities and as between Local and Various States of Origin and Forwarded Business by Commodities and as between Local and Various States of Destination

| STATE OF ORIGIN 26 States | TOTAL CAR-LOADS | LOCAL TO U. I. C. R R. | INTER-CHANGED WITH STEAM & ELECTRIC ROADS | COAL | CEMENT | GASOLINE | OIL | PIPE | STEEL GATES | STEEL | SAND, GRAVEL & ROCK | PLASTER | SALT | FUEL OIL | PET. PRODUCTS | SOAP | TERRA COTTA | BED SPRINGS | STEEL SASH | EARTH | SODA ASH | PAPER | TIES, LUMBER & POSTS | SHINGLES & LATH | BOX SHOOKS | TRACTORS | AUTOS | SHEEP | CATTLE | WALLBOARD | PULP | BRICK & TILE | CANS | COKE | BAGS | ROOFING | BEETS | POLES | BEER | HIGH EXPLOSIVES | SULPHUR | COTTON | WIRE | CEREAL | FURNITURE | WASHERS | JARS | MASH | SHOVEL | FOX FOOD | INSULATORS | SEED | CONSTR. EQUIPMENT | HAY | KEROSENE | QUARTZ | MELONS & FRUIT | LABLES | ORANGES | RICE | TWINE | STOVES | MILK | SUGAR | POTATOES | GRAIN | PULP | MISCELLANEOUS |
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Re. Railway Labor Act
Docket #12

Total interchange 4128
Total local 2226

Originated on U. I. C.

EXHIBIT NO. 28
Sheet No. 2

BEFORE THE INTERSTATE COMMERCE COMMISSION

Statement of Carload Business Handled by The Utah Idaho Central Railroad Company, Six Months Period July 1, 1934 to December 31, 1934
Showing Received Business by Commodities and as between Local and Various States of Origin and Forwarded Business by Commodities and as between Local and Various States of Destination

| STATE OF DESTINATION 31 States | TOTAL CARLOADS | LOCAL | INTERCHANGED WITH CONNECTIONS 31 States | MILK | SUGAR | POTATOES | CANNED GOODS | CATTLE | SHEEP | FLOUR | BRICK | GRAIN | HAY | ONIONS | FRUIT | SYRUP | SEED | PULP | TOMATOES | SAND-GRAVEL | LIME ROCK | POULTRY | VEGETABLES, MIXED | MACHINERY | CANTALOUPES | POULTRY | BEETS | MOLASSES | PULP | LUMBER | CANS | MISCELLANEOUS |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Utah | 2547 | 2041 | 506 | 71 | 360 | 15 | 15 | 87 | 28 | 17 | 14 | 71 | 3 | 7 | 3 | 4 | 2 | 8 | | 247 | 26 | | | | | | 1349 | | 94 | 1 | 119 | 7 |
| Wyoming | 278 | | 278 | 11 | 3 | 211 | 2 | | 1 | | | 1 | | 2 | 15 | | | | 32 | | | | | | | | | | | | | |
| Colorado | 232 | | 232 | 35 | 2 | 134 | 4 | 5 | 7 | | | 1 | | 28 | 1 | | | | 8 | | | | | | | | | 7 | | | | |
| Kansas | 68 | | 68 | | 28 | 9 | 26 | | | | | | | 1 | | | | | 4 | | | | | | | | | | | | |
| Missouri | 219 | | 219 | | 42 | 65 | 14 | | | | | | | 23 | 5 | | 1 | | 69 | | | | | | | | | | | | |
| Nebraska | 130 | | 130 | 1 | 67 | 4 | 16 | | 31 | | | | | 2 | | | | | 9 | | | | | | | | | | | | |
| Idaho | 273 | 185 | 88 | 12 | 4 | | | 1 | | | | 7 | | | | | | | | 14 | 60 | | | | | | 174 | 1 | | | | |
| Washington | 26 | | 26 | 19 | 4 | | 3 | | | | | | | | | | | | | | | | | | | | | | | | | |
| California | 154 | | 154 | 24 | 4 | 4 | 59 | 14 | 25 | | | | | | 13 | | | | | | | 1 | 1 | 3 | | 6 | | | | | | |
| Oklahoma | 29 | | 29 | | 15 | 1 | 9 | | | | | | | | | | | | 4 | | | | | | | | | | | | | |
| Texas | 77 | | 77 | 15 | 29 | 9 | 7 | | | | | | | 6 | | | | | 11 | | | | | | | | | | | | | |
| Nevada | 12 | | 12 | 8 | | | | | 4 | | | | | | | | | | | | | | | | | | | | | | | |
| Minnesota | 22 | | 22 | | 16 | | 1 | | 4 | | | | | | | | 1 | | | | | | | | | | | | | | | |
| Ohio | 15 | | 15 | | 14 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Illinois | 72 | | 72 | | 25 | 1 | 1 | | 43 | | | | | | | | | | 2 | | | | | | | | | | | | | |
| Penn. | 16 | | 16 | | | | 16 | | | | | | | | | | | | | | | | | | | | | | | | | |
| New Mexico | 24 | | 24 | 23 | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Oregon | 4 | | 4 | 3 | | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | |
| South Dakota | 4 | | 4 | | | | 4 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Louisiana | 2 | | 2 | | | | | | | | | | | | | | | | 2 | | | | | | | | | | | | | |
| Iowa | 55 | | 55 | | 52 | 1 | 1 | | | | | | | 1 | | | | | | | | | | | | | | | | | | |
| Michigan | 6 | | 6 | | 6 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Wisconsin | 3 | | 3 | | 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| New York | 7 | | 7 | 1 | 2 | | 1 | | | | | | | | | | | | | | | | | | | 3 | | | | | | |
| New Jersey | 3 | | 3 | | 1 | | 2 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Tennessee | 6 | | 6 | | 6 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| West Virginia | 2 | | 2 | | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Maryland | 3 | | 3 | | | | 3 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Indiana | 8 | | 8 | | 8 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Montana | 34 | | 34 | 22 | | 2 | 4 | | | | | | | | 1 | | | | 2 | | | | 1 | | 2 | | | | | | | |
| Massachusetts | 7 | | 7 | | | | | | | | | | | | | | | | 7 | | | | | | | | | | | | | |
| Total | 4338 | 2226 | 2112 | 245 | 694 | 456 | 190 | 107 | 143 | 17 | 14 | 80 | 3 | 70 | 38 | 4 | 4 | 8 | 150 | 261 | 86 | 1 | 2 | 3 | 2 | 9 | 1522 | 8 | 94 | 1 | 119 | 7 |

| | | Percentage |
|---|---|---|
| Forwarded Traffic Destined to Utah | 2547 | 58.7% |
| Forwarded Traffic Destined Other States | 1891 | 41.3% |
| Total | 4338 | 100.0% |
| | | |
| Local Forwarded Traffic | 2226 | 51.3% |
| All Other Forwarded Traffic | 2112 | 48.7% |
| Total | 4338 | 100.0% |

## Exhibit 32 (Abstracted)

### Tr. 513-523

xhibit 32 is the certificate of incorporation of The Utah ho Central Railroad Company. This certificate provides t "the objects and purposes for which, and for any of which, corporation is formed, and the nature of the business to be nsacted, are in part as follows:

"To acquire and hereafter to maintain, manage, operate and extend the railways (whether street or interurban, or railroads in general) property and franchises hereto- owned or held by Utah Idaho Central Railroad Company, rporation organized and existing under the laws of the State Utah; also to build, construct, acquire by purchase, lease, or erwise, complete, equip, manage, maintain and operate by m, electricity, or other motive power, other lines of railway railroads outside of the State of Delaware;

cquire rights over or in connection with any other railways; perate all or any of its lines of railway by steam, electricity, ther motive power; * * * * to purchase, acquire, own, hold enjoy the benefits of and dispose of stock, bonds, and any all forms of obligations or securities of other railway com- ies, including street railway companies, * * * * also to pur- se, acquire, own, hold, manage and operate in any manner er railways; whether street, interurban, or railways in gen- , and whether operated by electricity, steam, or other motive er, whether within or without the State of Utah and the te of Idaho, whenever and as thereunto duly authorized by * * * * *"

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Ex. 33 524

Plaintiff's Exhibit No. 33, offered and received in evidence, words and figures as follows:)

"Pocatello, daho.
December 1st, 1933."

ar Sir:

"We are handing you herewith proposed schedule of rules, working conditions, and rates of pay which we have prepared from the information we have, according he needs and desires of the men in station and train service he Utah Idaho Central Railroad.

"We respectfully submit the same for your considera and adoption or advice of an early date as to when you can with us and some of your own employees as provided by P graph Four, Section 2, of the Railway Labor Act of May 1926, to enter into a friendly discussion with a view of re ing a satisfactory agreement.

"Yours very truly,"

(Signed) "H. C. Fanner
"Deputy President
Brotherhood of Railroad Trainmen"

"J. Stice
"General Chairman
Order of Railroad Telegraphers."

---

Plaintiff's Exhibit No. 34, offered and received in evide is in words and figures as follows:)

"Mr. H. C. Tanner, Deputy President, Brotherhood of R road Trainmen, P. O. Box No. 306, Ogden, Utah.

December 12, 1

"Dear Sir:

434 "In response to yours of December 1st submitting proposed agreement betwen the Brotherhood of R road Trainmen and The Utah Idaho Central Railroad Co pany, covering a schedule of rules, working conditions a rates of pay for men in train service.

"Please be advised that this Company has an agreem with the Amalgamated Association of Street and Elect Railway Employees and Coach Operators of America, Divisi #418, which covers the rules, working conditions, and ra of pay for men in train service.

"Your truly,

"PHM:HK

"Carbon Copy to Arthur Ramsden, Pres.,
Amalg. Assoc'n. of St. & Elec. Ry. Employees and Co Operators of America, Division, 418, Ogden, Utah."

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(Plaintiff's Exhibit No. 35, offered and received in evi-
5 dence, is in words and figures as follows:) 526

December 15th, 1933.

. H. Mulcahy General Manager, Utah Idaho Central Rail-
oad 417 Kiesel Building, Ogden, Utah.

ear Sir:

"This will acknowledge receipt of your favor of December
1933 for which I thank you.

"The contents of your letter have been noted and the
estion of jurisdiction has already been handled between the
otherhood of Railway Trainmen and the Amalgamated
sociation of Street and Electric Railway Employees. Mr.
F. Whitney, President of the Brotherhood of Railway Train-
n and Mr. W B. Fitzgerald of the Amalgamated Associa-
n of Street and Electric Railway Workers have settled
e question of jurisdiction.

"The majority of the members employed on the Utah Idaho
ntral Railroad are members of the Brotherhood of Railway
ainmen and the attached certificate of authorization has
en signed by practically all of your employees.

"I would appreciate a conference at your convenience in
der that we may enter into a friendly discussion and I will
ng with me these certificates referred to.

"I will appreciate a reply at your convenience.

"Respectfully yours,"

( Signed ) "H. C. TANNER.

CT:JL"

527

(Attached to foregoing letter is a printed slip in words
5 and figures as follows:)

"Certificate of Authorization

"This certifies that the Brotherhood of Railroad Train-
n and its Constituted Officers and Committees representing
ainmen, yardmen, bus and truck line drivers employed on

busline

.....railroad

truck line

is hereby given full power and authority to represent the undersigned employee in any and all matters concerning working conditions, and rate of pay, which are now, or may hereafter be, under consideration between the aforesaid General Committee and the Management of the Railroad on which I am now employed.

"Signed_____

"Title of Position_____

"Post Office Address_____

"Division of Railroad_____

"Dated at_____

"Date_____

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(Plaintiff's Exhibit No. 36, offered and received in evidence, is in words and figures as follows:)

437

December 15, 193

"Mr. H. C. Tanner, Deputy President, Brotherhood of Railroad Trainmen, P. O. Box No. 806, Ogden, Utah.

"Dear Sir:

"In reply to yours of December 15th and in further reference to mine of December 12th,

"The Utah Idaho Central Railroad Company considers itself a party to valid contract as outlined in my letter above referred to and feels that during the term of the contract it may not negotiate the matters referred to by you other than in accordance with the terms and provisions of said contract.

"Yours truly,

"PHM:HK"

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(Plaintiff's Exhibit No. 37, offered and received in evidence, is in words and figures as follows:)

(On letterhead of "Brotherhood of Railroad Trainmen")

"F. R. Eckardt, Sec. 3531 Ogden Ave C. B. Doty, President 2223 Jefferson Avenue Printed in U. S. A. J. E. DeBano, Treas. No. 4 Holly Rue Apts 802-25th Street

"Brotherhood of Railroad Trainmen Ogden Lodge No. 68

Ogden Utah January 8th, 1934

Mr. P. H. Mulcahy, General Manager, Utah Idaho Central Railroad, 417 Kiesel Bldg., Ogden, Utah.

"Dear Sir:—

438 Concerning in the letter of Mr. H. C. Tanner Deputy President, Brotherhood of Railroad Trainmen to you under date of December *Ith* 1933, ninety three per cent of the employees of the Utah Idaho Central Railroad are members of the Brotherhood of Railroad Trainmen and we the undersigned have been elected as the local grievance committee to represent them. It is our desire to meet with you in conference relative to negotiating an agreement covering wages and working conditions for men engaged in train service on the Utah Idaho Central Railroad. The proposed schedule of rules, working conditions and rates of pay were sent you under date of December *Ith* 1933.

"Would appreciate an early date for this conference and would like to be advised sufficiently in advance to get committee together.

"Thanking you for an early reply we are 530

"Respectfully Yours"

(Signed) "W. H. Smith, Chairman"

(Signed) "W. A. STONE, Vice-Chairman"

(Signed) "W. JESSOP, Secretary"

CC-A. F. Whitney, President B. of R. T."

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(Plaintiff's Exhibit No. 38, offered and received in evi-
39 dence, is in words and figures as follows:)

"January 17, 1934.

Mr. W. H. Smith, 238 15th Street, Ogden, Utah. Mr. W. A. Stone, R. F. D. #2, Sunset, Utah, Mr. Willard Jessop, 3501 Washington Ave., Ogden, Utah.

"Gentlemen:

"In reply to yours of January 8th relative to a proposed agreement between this company and the Brotherhood of Railroad Trainmen.

"As you gentlemen are aware, this Company is a party to an agreement with Division 418 of the Amalgamated Association of Street and Electric Railway Employees and Coach Operators of America which agreement covers the rules, working conditions, and rates of pay for men in train service and in coach service and the company considers itself bound by the terms and conditions of that agreement.

"Yours truly,

"PHK:HK"

---

(Plaintiff's Exhibit No. 39, offered and received in evidence, is in words and figures as follows:)

(On letterhead of "Brotherhood of Railroad Trainmen"
"Ogden Lodge No. 68

"Ogden Utah April 13, 1934

"Mr. P. H. Mulcahy, Gen. Manager Utah Idaho Central R. R.
Ogden, Utah.

"Dear Sir:—

"Having been duly elected as a committee to represent and act for ninety per cent of the men emlpoyed in train and yard service on the Utah Idaho Central R. R. as members of the Brotherhood of Railroad Trainmen, it is our desire to meet with you in conference for the purpose of negotiating an agreement between the Utah Idaho Central Railroad Co. and the Brotherhood of Railroad Trainmen, covering wages, working conditions and hours of service for men working in train and yard service of said Utah Idaho Central Railroad.

"This agreement to become in force and effect June 1st 1934, the expiration date of the agreement now in force between the Utah Idaho Central Railroad Company and the Amalgamated Association of Street and Electric Railway Employees and coach operators of America.

"An early date for this conference will be greatly appreciated, Will you kindly advise sufficient in advance to permit the assembly of the committee.

"Respectfully yours"

(Signed) "W. H. SMITH, Chairman"

(Signed) "W. A. STONE, Vice Chairman"

(Signed) "W. JESSOP, Secretary

#3- 3501 Wash Ave
Ogden Utah

"cc to A. F. Whitney, Pres. D. A. Mackenzie

"Seal"

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Exhibit 40 (Abstracted)

442 Exhibit 40 is a verbatim copy of an agreement proposed by the Brotherhood of Railroad *Trainment* to the Utah Idaho Central Railroad, to cover rates of pay, hours, seniority and conditions of employment for motormen, conductors, brakemen, trolley-men, and motor coach operators. This agreement was not accepted by the company. If it had been accepted, the cost of operations of the company would have increased $36,000 to $40,000 per year.

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(Plaintiff's Exhibit No. 41, offered and received in evi-
456 dence, is in words and figures as follows:

(On letterhead of Hotel Utah:)

"The Hotel Beautiful Guy Toombes, Manager

Salt Lake City, Utah July 8, 1936

"Mr. P. H. Mulcahy, General Manager, Utah-Idaho Central Railroad, Ogden, Utah

"Dear Sir:

"The copy of the transcript of the statements made at our conference July 2nd, was received on the following date. I appreciate your prompt forwarding of it to me.

"On account of the week-end holiday there was a delay in my conferring with the United States District Attorney on

the question you raised as to the advisability, or the
457 right of the Brotherhood of Railroad Trainmen to initiate negotiations for a wage and rules agreement in accordance with the provisions of the Railway Labor Act, pending the date of hearing in Judge Johnson's Court on the Company's request for an injunction against the United States District Attorney enforcing the Railway Labor Act.

"After conferring with a representative of the District Attorney, it has been decided to take no further action on my request for a conference with representatives of the company to negotiate a wage agreement until after the date of the hearing in Judge Johnson's Court, which I understand is August 24, 1936.

"Yours truly,"

(Signed) "D. A. MACKENZIE

"D. A. Mackenzie, Vice President, Brotherhood Railroad Trainmen 1553 Linden Avenue, Long Beach, California
"CC—Mr. R. M. Rampton"

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(Plaintiff's Exhibit No. 42, offered and received in evidence, is in words and figures as follows:

"Door to door service on your less than carload freight shipments

"Specify Utah Idaho Central routing on all your orders
458 thru freight rates with all lines

"Following morning delivery on all carload and L. C. L. freight shipments, between Cache Valley Points—Ogden and Salt Lake City.

"Express Service

"From all stations along this railroad, shipments by express may be sent over the shortest and most direct routes to any of the 25,000 points in the United States and Canada served by the Railway Express Agency.

"General offices 4th floor Kiesel bldg. Ogden Utah Phones 312, 313 Passenger Station Phone 1012 Freight Station Phone 1012.

"P. H. MULCAHY, General Manager
"J. B. HUNTER, Traffic Manager

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"The Utah Idaho Central Railroad Company
" 'Cache Valley Route'

"Between Preston, Idaho; Logan, Utah Cache Valley points igham City, Ogden, Salt Lake City and *Intermedite* points

"Rail Route Over Collinston Divide Automobile Coach 9 Route Through Box Elder and Sardine Canyons Fast and Frequent Service Electric All Steel Trains Auto- bile Safety Coaches

"Careful courteous and efficient drivers.

"Westinghouse Air Brake Equipment

Time Tables Corrected to Sept. 1, 1935 Subject to Change Without Notice

The Utah Idaho Central Railroad Co. Time Tables

Ex. 42 552

| ne Table No. 17 | | NORTH BOUND 1. | | | Read Up | | | |
|---|---|---|---|---|---|---|---|---|
| fective ptember 1, 1935 | Dis- tance From Ogden | Daily Except Sun- Day | 3 Daily | Coach 201 Daily | 5 Daily | 7 Daily | Coach 203 Daily |
| | | | | A.M. | P.M. | P.M. | P.M. |
| eston (Ida) Ar. | 94.7 | | 10.35 | | 4.45 | 7.00 | 10.00 |
| Franklin..... | | | | | | | 9.46 |
| Fairview .... | 88.7 | | 10.22 | P.M. | 4.30 | 6.48 | |
| wiston (Utah) | 86.4 | | 10.18 | 12.06 | 4.25 | 6.44 | 9.36 |
| Sugarton .... | 85.4 | | 10.15 | | 4.22 | 6.41 | |
| Merrills..... | 83.3 | | 10.12 | 11.56 | 4.19 | 6.38 | 9.26 |
| Richmond .. | 81.3 | | 10.09 | 11.53 | 4.16 | 6.35 | 9.23 |
| Smithfield .. | 75.2 | | 9.57 | 11.45 | 4.04 | 6.24 | 9.15 |
| Hyde Park.. | 72.4 | | 9.51 | | 3.56 | 6.16 | |
| Logan ..... Lv. | 67.5 | A.M. | 9.40 | 11.33 | 3.44 | 6.05 | 9.03 |
| Logan ..... Ar. | 67.5 | 7.52 | 9.34 | | 3.39 | 6.00 | |
| ovidence.... | 65.9 | 7.47 | 9.29 | | 3.34 | 5.55 | |
| Millville .... | 63.9 | 7.42 | 9.24 | | 3.29 | 5.50 | |
| Hyrum ..... | 60.2 | 7.34 | 9.17 | 11.16 | 3.22 | 5.43 | 8.46 |

NORTH BOUND — Read Up

Time Table No. 17 — 1.

| Effective September 1, 1935 | Distance From Ogden | Daily Except Sunday | 3 Daily | Coach 201 Daily | 5 Daily | 7 Daily | Coach 203 Daily |
|---|---|---|---|---|---|---|---|
| Wellsville ..... | 56.0 | 7.25 | 9.07 | 11.05 | 3.13 | 5.35 | 8.35 |
| Mendon ..... | 50.6 | 7.15 | 8.57 | | 3.02 | 5.25 | |
| Beaver Dam.. | 43.5 | A.M. | 8.44 | | 2.49 | P.M. | |
| Collinston .. | 39.9 | | 8.35 | | 2.40 | | |
| Dewey ..... | 36.0 | | 8.30 | | 2.35 | | |
| Honeyville .... | 30.2 | | 8.21 | | 2.26 | | |
| Mantua ..... | | | | 10.38 | | | 8.08 |
| Brigham .... | 21.1 | | 8.05 | 10.25 | 2.10 | | 7.55 |
| Perry ..... | 17.3 | | 7.53 | | 2.03 | | |
| Willard ..... | 13.8 | | 7.47 | 10.09 | 1.57 | | 7.39 |
| Hot Springs | 8.6 | | 7.38 | | | | |
| Harrisville | 4.5 | | 7.31 | | | | |
| Ogden ..... Lv. | 0.0 | | 7.20 | 9.45 | 1.30 | | 7.15 |
| | | | A.M. | A.M. | P.M. | | P.M. |

| Bamberger Electric | Connections from Salt Lake City | | | | |
|---|---|---|---|---|---|
| Ogden ..... Ar. | 7.10 | 9.40 | 1.10 | | 6.40 |
| | Train | Coach | Train | | Train |
| Salt Lake City Lv. | 6.00 | 8.30 | 12.00 | | 5.30 |
| | A.M. | A.M. | M. | | P.M. |

Ogden, Plain City Service Via Harrisville

| P.M. | A.M. | | | A.M. | P.M. |
|---|---|---|---|---|---|
| 4.20 | 8.00 | Lv. | Plain City Ar. | 8.00 | 4.20 |
| 4.30 | 8.10 | | Poplar | 7.50 | 4.10 |
| 4.37 | 8.17 | | Farr West | 7.45 | 4.03 |
| 4.48 | 8.28 | | Harrisville | 7.40 | 3.55 |
| | 8.45 | | 17th and Wash. | | 3.40 |
| 5.00 | 9.00 | Ar. | Ogden Lv. | 7.25 | 3.25 |

"Service on School Days Only."

"SOUTH BOUND READ DOWN

| 6 Daily P.M. | 4 Daily P.M. | Coach 204 Daily | Coach 202 Daily A.M. | 2 Daily A.M. | |
|---|---|---|---|---|---|
| 5.10 | 3.10 | | 9.40 | 7.00 | Lv. |
| | | | 9.52 | | |
| 5.21 | 3.20 | P.M. | | 7.10 | f |
| 5.25 | 3.25 | 1.57 | 10.02 | 7.14 | s |
| 5.27 | 3.28 | | | 7.18 | f |
| 5.30 | 3.31 | 2.07 | 10.12 | 7.19 | f |
| 5.33 | 3.34 | 2.10 | 10.15 | 7.23 | s |
| 5.44 | 3.45 | 2.18 | 10.23 | 7.34 | s |
| 5.51 | 3.52 | | | 7.41 | f |
| 6.03 | 4.03 | | | 7.53 | Ar. |
| 6.07 | 4.07 | 2.30 | 10.35 | 7.57 | Lv. |
| 6.12 | 4.12 | | | 8.02 | f |
| 6.17 | 4.17 | | | 8.07 | f |
| 6.26 | 4.26 | 2.44 | 10.49 | 8.16 | s |
| 6.34 | 4.34 | 2.55 | 11.00 | 8.24 | s |
| 6.44 | 4.44 | | | 8.34 | s |
| 6.57 | P.M. | | | 8.49 | f |
| 7.03 | | | | 8.55 | f |
| 7.12 | | | | 9.04 | s |
| 7.21 | | | | 9.13 | f |
| | | 3.30 | 11.35 | | |
| 7.36 | | 3.40 | 11.45 | 9.28 | s |
| 7.44 | | | | 9.36 | f |
| 7.50 | | 3.52 | 11.57 | 9.42 | f |
| 7.58 | | | | 9.50 | f. |
| 8.05 | | | | 9.57 | f. |
| 8.20 | | 4.20 | 12.25 | 10.10 | Ar. |
| P.M. | | P.M. | P.M. | A.M. | |

"Employees are governed by rules which they cannot change. In event of any disagreement with conductor relative to tickets, etc., passengers are requested to pay the amount charged, taking receipt, and refer matter to the Traffic Manager.

"Lost articles found on cars, coaches, or in waiting rooms are forwarded to room 417 Kiesel Building, Ogden, and held for owner

"The railroad company will not be responsible for unchecked articles left in stations, cars, or coaches.

Connections to Salt Lake City

| | | | | |
|---|---|---|---|---|
| 8.30 | 4.30 | 12.30 | 10.30 | Lv |
| Train | Train | Coach | Train | |
| 9.40 | 5.40 | 1.40 | 11.40 | Ar |
| P.M. | P.M. | P.M. | A.M. | |

's' indicates regular stop. 'f' indicates flag stop.

"In addition to the flag stops shown; trains will stop on flag at Broom, Union Pacific and Southern Pacific Interchange, Midway, View, Clays, Nerva, Woods, South Perry, Davis, South Brigham, North Brigham, Bristol, Harper, Calls Fort, Crystal Springs, Madsen, Pioneer, Beaton, Ukon, Beaver Dam, Summit, Kidman, Farrell, Petersboro, Hills; West Hyrum, Anderson, Humphries, South Logan, Greenville, Mack, Carson, Empey, Bert, North Cache High School, Idaline, Whitney, Beckstead and South Preston.

"All trains will make regular stop at Second North, Logan.

"Automobile coaches will stop on flag to pick up passengers, or will stop to discharge passengers upon request at any point on the highway outside of city limits. Within city limits coaches will stop at points designated by coach stop signs.

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(Plaintiff's Exhibit No. 43, offered and received in evidence, is in words and figures as follows:)

"Statements of Interstate Commerce Commission Concerning Electric Railways Which Are Contained In Various Annual Reports From 1921 to 1935 Inclusive

464 "From the 35th Annual Report of the Interstate Commerce Commission, dated December 1, 1921.

"From page 21: "'Some difficulty has arisen in the construction of section 20a in its application to electric lines. Under the law as it now stands, we have no jurisdiction over the issuance of securities of a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation.' Certain electric railways independently operated are engaged in the general transportation of freight in interstate commerce in addition to the transportation of passengers. The use of electricity as motive power for railways is rapidly increasing. Some electric lines correspond substantially to steam roads in all important particulars except that of motive power. Under section 15a of the act we are given authority to include in groups of carriers for rate making purposes such interurban electric lines
465 as are engaged in the general transportation of freight. It seems desirable that section 20a of the interstate

commerce act be so amended as to indicate definitely the classes of electric railway companies subject to that section.'

"From the Summary of Recommendations on page 58, being paragraph 6 on said page:

"'That section 20a of the interstate commerce act be so amended as to indicate definitely the classes of electric railway companies subject to that section.'

—

"From the 36th Annual Report of the Interstate Commerce Commission, dated December 1, 1922.

"From page 30: "'A number of electric interurban railway companies have claimed exemption from the provisions of section 15a on the ground that they are not operated as part of general steam-railroad systems of transportation or engaged in the general transportation of freight. Investigation shows that these lines offer a great variety of conditions with respect to the handling of freight. In construing the words of the statute, "general transportation of freight" we have taken into consideration not only the holding out of the carriers by means of tariffs and otherwise to handle freight, but in addition the extent of their actual freight service. With the in-
466 creased participation by electric interurban railway companies in the general business of transportation lines now considered exempt from the provisions of paragraphs (5) to 16), inclusive, of section 15a of the act may later come within their scope.'

"From page 32: "'Under the law as it now stands we have no jurisdiction over the issue of securities of a "street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation." Certain electric railways independently operated are engaged in the general transportation of freight in interstate commerce in addition to the transportation of passengers. Some electric lines correspond substantially to steam roads in all important particulars except that of motive power. Unless such lines are held not to be "street, suburban, or interurban"
467 electric railways, they are not subject to our jurisdiction under section 20a. Under section 15a of the act we are given authority to include in groups of carriers for rate making purposes such interurban electric lines as are engaged

in the general transportation of freight. It is desirable that section 20a of the interstate commerce act so amended as to also include explicitly electric railway companies engaged in the general transportation of freight.

"From the Summary of Recommendations on page 76, being paragraph 6 of said summary:

"'That section 20a of the Interstate commerce act be amended to include within its provisions electric railway companies engaged in the general transportation of freight.'

"From the Report of the Joint Committee of the Interstate Commerce Commission and of the National Association of Railway and Utilities Commissioners on Cooperation—being quite a lengthy report concerning an agreement on the subject of cooperation between the National and State commissions. Quotation is from page 233.

"'The Interstate Commerce Commission realizes that there is danger of overcentralization of authority, that the field of regulation is vast, and that the State commissions are often better informed than itself in regard to local conditions and local needs.'

"From the 37th Annual Report of the Interstate Com-
468 merce Commission, dated December 1, 1923.

"Quotation is from the Commission's recommendations on page 70:

"'We adhere to the recommendations made in last report.'

"From the 38th Annual Report of the Interstate Commerce Commission dated December 1, 1924.

"From page 20: "'Material difference of opinion developed concerning the status of electric railways under section 15a, and the question was accordingly made the subject of a hearing, following which a report was issued announcing general conclusions as to the application of the statute to such lines, 86 I.C.C. 751. Such further proceedings will be had as may be found necessary in dealing with individual companies.'

"From page 78, being the recommendation of the Commission.

"'We adhere to our previous recommendations.'

"From the 39th Annual Report of the Interstate Commerce Commission, dated December 1, 1925.

"From page 20: " 'The number of electric railways
469 claiming *exemption* from the provisions of section 15a is 198. As stated in our preceding report our general conclusions with respect to the status of electric railways under the statute was announced in Application of Section 15a of the Interstate Commerce Act to Electric Railways, 86 I.C.C. 751. Such further proceedings will be had as may be found necessary in dealing with individual companies.'

"From page 32: " 'While the major part of the service of the bureau of statistics necessarily has to do with the steam railways, reference may be made here to some of the most important data of the various other common carriers subject to our jurisdiction. The electric railways reporting to us operated 14,165 miles of road in 1928, the latest year for which detail compilations have been completed; their operating revenues amounted to $236,429,937; their operating income to $55,258,030; and their net income to $13,585,895.'

"From the recommendations of the Commission, on page 72, being paragraph 4:

" '4. That section 20a of the interstate commerce act be amended to include within its provisions electric railway companies engaged in the general transportation of freight.'

"3.

"From the 40th Annual Report of the Interstate Com-
470 merce Commission, dated December 1, 1926.

"From page 20: " 'In our last report we stated that 198 electric railways claimed exemption from the provisions of section 15a. Several proceedings have been instituted to determine the status of individual companies, applying the principles announced in Application of Section 15a of the Interstate Commerce Act to Electric Railways, 86 I.C.C. 751, and it is expected that others will be necessary.

"From page 31: " 'While the major part of the service of the bureau of statistics necessarily has to do with the steam railways, reference may be made here to some of the most im-

portant data of the various other common carriers subject to our jurisdiction. The electric railways reporting to us operated 14,234 miles of road in 1924, the latest year for which detailed compilations have been completed; their operating revenues amounted to $211,378,199, their operating income to $48162,431 and their net income at $9,177,533.'

—

From the 41st Annual Report of the Interstate Commerce Commission, dated December 1, 1927.

"From page 6: "'In our last report we stated that
471 198 electric railways claimed exemption from the provisions of section 15a. There has been no material change in this status, and further proceedings will be instituted as may be necessary in individual cases supplementing or applying the principles announced in Application of Section 15a of the Interstate Commerce Act to Electric Railways, 86 I.C.C. 751.'

—

"From the 42nd Annual Report of the Interstate Commerce Commission, dated December 1, 1928.

"From page 5: "'In our last report we stated that 198 electric railways claimed exemption from the provisions of section 15a. There has been no material change in this status and further proceedings will be instituted as may be necessary in individual cases supplementing or applying the principles announced in Application of Section 15a to Electric Rys., 86 I.C.C. 751.'

"From page 79: under a major sub-head as follows: "'Scope of Jurisdiction over Electric Railways'

"'In our annual reports to the Congress for various years since the enactment of the amendments of 1920, we have recommended that section 20a, relating to the issuance of
472 securities, be so amended as to apply to electric railway companies engaged in the general transportation of freight. Experience in the administration of the act, as well as changes in the conditions affecting electric railway companies, seem to require that consideration be given to the general subject of the application of various sections of the statute to those companies. At present, the general provisions of the act apply to electric as well as to steam railway companies, with certain

exceptions. Thus, the provisions of paragraphs (18) to (21) of section 1, relating to construction or abandonment of lines, are not applicable to—

street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

"'Section 15a, which provides the general rate scheme of the transportation act, 1920, including recapture of excess income, specifically excludes from its application—

"'(1) street or suburban electric railways unless operated as a part of a general steam railroad system of transportation.

"'(2) interurban electric railways unless operated as
473 a part of a general steam railroad system of transportation or engaged in the general transportation of freight.

"The authority given us under section 20a to regulate the issuance of securities or assumption of obligations by carriers specifically excepts—a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation.

"'In the construction of these exclusion clauses great difficulty has been experienced, particularly in determining the roads properly classifiable as interurban electric railways. Practically all of the interurban electric lines of the country are engaged to a greater or less extent in the transportation of freight. Ordinarily these lines have a preponderance of passenger traffic, but the large diversion of such traffic to highways through the increasing use of automobiles has led these carriers to endeavor to recoup these losses through increased participation in freight traffic. Certain electric railway lines for many years have engaged largely in "'freight transportation,
474 their business being substantially the same as that of steam railroads, the only material difference being in motive power. Where the functions of an electric line are substantially the same as *thos* of an ordinary steam railroad the public interest would seem to justify the exercise of our jurisdiction in the matters of securities, construction or abandonment, regulations of rates, recapture of excess earnings, and consolidation with other carriers or acquisition of control of one carrier by an-

other, to the same extent as in the case of steam railroads. However, the greatly varying circumstances of electric lines indicate the necessity of individual treatment. It is recommended that, instead of attempting to define the classes of electric lines that are exempt from our jurisdiction under the several provisions in question, a general exemption of all electric lines be substituted, excepting such lines as interchange standard freight equipment with steam railroad lines and participate in through interstate freight rates with such lines. Provision should also be made for the exemption of particular electric railway companies falling within the excepted
475 class, such exemption to be made upon aplication of any such electric railway company and if it is able to show to our satisfaction, after notice and opportunity to be heard that it is not affected with an important national interest so far as the provisions in question are concerned.'

"From the Recommendations of the Commission, on page 8, being paragraph 11:

"'That the present exemption provisions of paragraph (2) of Section 1, Paragraph (1) of section 15a, and paragraph (1) of section 20a, applicable to electric railways, be amended by substituting provisions exempting all electric railways except such as interchange standard freight equipment with steam railways, and participate in through interstate freight rates with such carriers; provision to be made for exemption of particular electric railways falling within the excepted class, if upon application they are able to show to the satisfaction of the commission, after notice and opportunity to be heard that they are not affected with an important national interest so far as the provisions in question are concerned.'

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"From the 43rd Annual Report of the Interstate Commerce Commission, dated November 30, 1929.

"From page 10: "'The complaint of George B. Hild
476 et al. v. Chicago North Shore & Milwaukee Railroad Co. No. 20518, pending at the close of the period covered by our last annual report, alleging in substance that the defendant had issued certain securities in violation of the provisions of section 20a of the act, was dismissed on the ground that it did not seek affirmative relief, but merely an expression of opinion

as to whether the provisions of the act had been violated. An application by the Cincinnati, Hamilton & Dayton Railway Co. for authority to issue securities in connection with the acquisition of certain interurban electric railways was dismissed on the ground that the applicant was not a carrier within the meaning of that term as used in section 20a of the act.'

"From page 89, paragraph 7: " 'That the present exemption provisions of paragraph (22) of Section 1, Paragraph (1) of section 15a, and paragraph (1) of section 20a, applicable to electric railways, be amended by substituting provisions
477 exempting all electric railways except such as interchange standard freight equipment with steam railways and participate in through interstate freight rates with such carriers; provision to be made for exemption of particular electric railways falling within the excepted class, if upon application they are able to show to the satisfaction of the commission, after notice and opportunity to be heard, that they are not affected with an important national interest so far as the provisions in question are concerned.'

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"From the 44th Annual Report of the Interstate Commerce Commission, dated December 1, 1930.

"From pages 22 and 23: " 'Piedmont & Northern Railroad Company v. Interstate Commerce Commission, et al., 280 U. S. 469:

" 'In this case there was involved the validity of our order in Piedmont & Northern Construction, 138 I. C. C. 363. The commission proceeding was instituted by application filed by the Piedmont & Northern, an electrically-operated railway under paragraphs (18) to (21) of section 1 of the Act, asking authority to undertake certain extensions of its lines. The application was made with the understanding that the Piedmont & Northern reserved the right to contend that it was an interurban electric railway, excepted by paragraph (22) of Section 1 from
478 commission authority over construction of new lines of railroad; and, after filing its application, the Piedmont & Northern moved to dismiss on that ground. In our report we held that the Piedmont & Northern was not an interurban electric railway, within the meaning of the exception to our jurisdiction contained in paragraph (22), and, assuming

jurisdiction, we found that the proposed extensions of lines were not required by the public convenience and necessity. By order we denied the application. Thereafter the *Piedmond* & Northern instituted this suit under the urgent deficiencies act of October 22, 1913, asking, in substance, that our order taking jurisdiction of its said application and denying the same, be set aside and annulled. In addition to filing answer to the petition, we moved to dismiss on the ground that the court lacked jurisdiction because our order, denying the administrative relief prayed for, was negative within the meaning of the Proctor & Gamble case, 225 U. S. 282, and Lehigh Valley R. Co. v. United States, 243 U. S. 412. The lower court assumed jurisdiction and its decree, dismissing the petition of the Piedmont & Northern, was based upon the merits, that is, the court upheld our conclusion that the Piedmont & Northern was not an interurban electric railway within the meaning of the exemption contained in paragraph (22).

"7

479 "'Upon the appeal we renewed our objections to the jurisdiction of the court. The decision of the Supreme Court is to the effect that the lower court should have dismissed the bill of complaint for want of jurisdiction, rather than on the merits. Pertinent provisions of the opinion read as follows:

"'"Plaintiffs do not complain of the order's denial of a certificate of public necessity and convenience. They concede that no court has the power to compel the Commission to issue such a certificate, since no railroad subject to the provisions of the Act has a right to extend its lines. Therefore, the order denying a certificate, being negative in substance as well as in form, infringed no right of the railway. Compare Proctor & Gamble Co. v. United States, 225 U. S. 282; Lehigh Valley R. R. Co. v. United States, 243 U. S. 412; United States v. New River Co., 265 U. S. 533, 540. * * * * Their sole contention is that the court below and the Commission erred in not holding that the Railway is an interurban electric railway within the exemption of paragraph 22. The defendants renew their objections to the jurisdiction of the Court.

"'"We think that the defendants' objection is well taken. * * * * If, as is contended, the Commission was without juris-

diction, the Railway is as free to proceed with the con-
480 struction as if the application had not been made and the commission had not acted. Nothing done by the Commission can prejudice the Railway's claim to immunity in any other proceeding.

"'"It is true that, if the Railway builds without having secured a certificate, it may suffer serious loss. For, a court may hold in an appropriate proceeding that the Railway is within the purview of paragraph 18. And the Railway may be thus subjected to the penalties prescribed by paragraph 20. These risks arise however, not from the order but from the statute. Compare Lehigh Valley R. R. Co. v. United States, 243 U. S. 412, 414. The order is entirely negative. It is not susceptible of violations and cannot call for enforcement. It does not finally adjudicate the Railway's standing; nor does it enjoin it to do or refrain from doing anything. The penalties provided in paragraph 20 are prescribed not for violation of an order of the Commission but for violation of the provisions of the statute. * * * *

"'"If the statute gives the commission jurisdiction over the Railway's application, then concededly the order is not sub-
481 ject to attack. If, on the other hand, the statute does not confer the jurisdiction, then obviously the order is no obstacle to the Railway's plans. What plaintiffs are seeking is, therefore, in substance, a declaratory judgment that the Railway is within the exemption contained in paragraph 22 of the Act. Such a remedy is not within either the statutory or the equity jurisdiction of federal courts. * * * *"'

"From the 44th Annual Reports of the I. C. C. continued.

"From page 96, paragraph 6. "'That the present exemption provisions of paragraph (22) of section 1, paragraph (1) of section 15a, and paragraph (1) of section 20a, applicable to electric railways, be amended by substituting provisions exempting all electric railways except such as interchange standard freight equipment with steam railways and participate in through interstate freight rates with such carriers, provision to be made for exemption of particular electric railways falling within the excepted class, if upon application they are able to show to the satisfaction of the commission after notice and opportunity to be heard, that they are not affected with an

important national interest so far as the provisions in question are concerned.'

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"From the 45th Annual Report of the Interstate Commerce Commission, dated December 1, 1931.

"From page 122, paragraph 16. "'That the present
482 exemption provisions of sections 1 (22), 15a, (1), and 20a (1) of the interstate commerce act, applicable to electric railways, be amended by substituting provisions exempting all electric railways except such as interchange standard freight equipment with steam railways and participate in through interstate freight rates with such carriers, provision to be made for exemption of particular electric railways falling within the excepted class, if upon application they are able to show to the satisfaction of the Commission, after notice and opportunity to be heard, that they are affected with an important national interest so far as the provisions in question are concerned. The reasons for this recommendation were stated in our forty-second annual report for the year 1928, at pages 79-81.

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"From the 46th Annual Report of the Interstate Commerce Commission, dated December 1, 1932.

"From page 102, paragraph 5 of Group II.

"'That the present exemption provisions of sections 1 (22), 15a (1) and 20a (1) of the interstate commerce act, applicable to electric railways, be amended by substituting provisions exempting all electric railways except such as
483 interchange standard freight equipment with steam railroads and participate in through interstate freight rates with such carriers, provisions to be made for exemption of particular electric railways falling within the excepted class, if upon application they are able to show to the satisfaction of the commission, after notice and opportunity to be heard, that they are not affected with an important national interest so far as the provisions in question are concerned. The reasons for this recommendation were stated in our forty-second annual report for the year 1928, at pages 79-81.'

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"From the 47th Annual Report of the Interstate Commerce Commission dated December 1, 1933.

"From page 20: "'To carry out the third purpose, the title makes it the duty of the Coordinator "forthwith to investigate and consider means, not provided for in this title, of improving transportation conditions throughout the country, including cost finding in rail transportation and the ability, financial or otherwise, of the carriers to improve their properties and furnish service and charge rates which will promote the commerce and industry of the country and including, also, the stability of railroad labor and other improvement of railroad labor conditions and relations." In pursuance of this
484 duty, he is directed from time to time to submit to us such recommendations calling for *fur*..... legislation to these ends as he shall deem necessary or desirable in the public interest, and the Commission is to transmit such recommendations, together with its comments thereon, to the President and to the Congress.

"'It will be noted that the investigations of the Coordinator in this respect are to cover all transportation conditions throughout the country, thus embracing not only the railroads but all other transportation agencies. Because of this duty which has been imposed upon the Coordinator, and the subsequent duty imposed upon us, other than already expressed, we shall not in this annual report make any recommendations with respect to further legislation. These will await the reports to be submitted to us by the Coordinator.'

"From page 51: "'United States v. Chicago, N. S. & M. R. Co. 288 U. S. 1.

"'The suit, under section 12 (1) of the act, was brought by the Government at our instance to enjoin the carrier from issuing any securities or assuming any obligation or liability in respect of the securities of others without first having obtained our authorization, as required by section 20a.
485 The only question was whether the railroad is an independently operated electric interurban railway, expressly excepted from the requirements of the section.'

"From page 73: "'On June 16, 1933, amendment of paragraphs (a), (f) and (g) of section 19a of the act was approved.

Paragraph (a), among other things, formerly authorized and directed us to value any street, suburban, or interurban electric railway subject to the provisions of the act whether such railway was or was not operated as a part of a general steam railroad system of transportation. Paragraph (a), as now amended, leaves to our discretion the valuation of any such railway not operated as a part of a general steam railroad system of transportation.'

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"From the 48th Annual Report of the Interstate Commerce Commission, dated December 1, 1934.

"From pages 15 and 16. " 'The Coordinator will, we understand, submit a further report or reports covering recommendations for transportation legislation at the next session of Congress. Because of this duty which has been imposed upon the Coordinator, and the subsequent duty imposed upon us in connection therewith, we shall not in this annual report,
486 except the two recommendations given below, make recommendations with respect to further legislation. These will await the reports to be submitted by the Coordinator.'

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"From the 49th Annual Report of the Interstate Commerce Commission, dated December 1, 1935.

"From page 20: " 'The Coordinator will, we understand, submit a further report or reports covering recommendations for transportation legislation at the next Session of Congress. Because of this duty which has been imposed upon the Coordinator, and the subsequent duty imposed upon us in connection therewith, we shall not in this report deal fully with the subject of the further legislation needed for the improvement of transportation conditions.'

"From pages 33 and 34:

" 'Scope of jurisdiction over electric railways'

" 'In our annual reports to Congress for the years 1928 to 1932, inclusive, we recommended that the exemption provisions of section 1 (22) and section 20a (1) applicable to electric railways be amended by substituting provisions exempting all electric railways except such as interchange standard freight equip-

ent with steam railways and participate in through interstate
eight rates with steam railways and participate in through
interstate freight rates with such carriers, the exemption
7 of particular railways to be made upon application and
satisfactory showing that they were not affected with an
portant national interest so far as the provisions in question
ere concerned. The reasons for this recommendation were
ated in our annual report for the year 1928 at pages 79-81.

"'In the construction of these exceptions great difficulty has
en experienced particularly in determining the roads properly
assifiable as interurban electric railways. In some instances
igation has been necessary for such determination. We re-
w our recommendation that the above provisions of the act
clarified by appropriate amendment along the lines of our
cision in Texas Electric Railway, 208 I. C. C. 193, in which
e said at page 202:

The Commission's view as to what constitutes an in-
rurban were stated in Rules for Testing Other Than Steam
ower Locomotives, supra. These views should not be lightly
eparted from after Congress has authorized the Commis-
on to determine the status of electric railways under a similar
emption provision in an act not otherwise administered by us.
In harmony with that and similar decisions, we are of
8 the opinion that an electric railway which is engaged
in the general transportation of freight, whether the
venue therefrom is greater or less than its passenger revenue,
hich handles the bulk of such freight in standard equipment
miliar to that used by the steam railroads, which freely inter-
anges the same with the steam railroads for transportation
or from points on their lines, a considerable portion thereof
eing handled in interstate or foreign commerce, and which
rticipates in *point* rates with the steam railroads for inter-
ate transportation, has more of the characteristics of a com-
ercial railroad operated by electric power than of an interur-
an as that term is used in the exemption provision under
onsideration.

"'We also recommend that a similar exemption of such elec-
ic railways as "carriers" from the provisions of section 5 (4)
nd (5) be made by limiting the definition of the term "carrier"
rough appropriate amendment of section 5 (17).'

"From pages 97 and 98:

"'4. That section 1 (22) and section 20a (1) be amended
489 by substituting provisions exempting from our jurisdiction all street, suburban and interurban electric railways except such as are operated as parts of general steam railroad systems of transportation or are engaged in the general transportation of freight and interchange standard steam railroad freight equipment with steam railroads for transportation of interstate or foreign commerce to or from points on their lines, and that a similar exemption of such electric railways as "carrier's" from the provisions of section 5 (4) and (5) be made by limiting the definition of the term "carrier" through appropriate amendment of section 5 (17).'"

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Exhibits 44 and 45 (Abstracted)

490 The first paragraph of a report issued by the Interstate Commerce Commission in August 1935, entitled "Electric Railways, year ended December 31, 1934, Selected Financial and Operating Data from Annual Reports, Statement No. 3576," reads as follows:

"The electric railways reporting to the Interstate Commerce Commission are those engaged in interstate commerce. Such railways are chiefly the interurban as distinguished from the city street railways. In 1932 the interurbans carried only about 5.4 percent of the passengers travelling by electric railway but they received about 97.3 percent of the freight revenue. Electrified parts of steam railways are not covered by the statistics in this publication."

In the above-quoted paragraph, the word "interurban" was used to describe all of the 127 electric railways reporting to the Interstate Commerce Commission (excluding electrified parts of steam railway systems). The report contains a list of all the electric railways so reporting.

Among the electric railways so listed, are some which in formal opinions the Commission has held to be "interurban" and some which, in formal opinions, the Commission has held not to be "interurban".

Included in said list of 127 electric railways are the following lines: Utah Idaho Central Railroad Company, Piedmont & Northern Railway Company, Sacramento Northern Railway Company, Chicago South Shore & South Bend Railroad, and Pacific Electric Railway Company, Chicago, North Shore & Milwaukee, Cincinnati & Lake Erie Railroad Company, Indiana Railroad, and Arkansas Valley Interurban Railway Company.

The list of electric railways in the report includes some railroads whose revenues are derived entirely from passenger traffic, some whose revenues are derived entirely from freight traffic, and many whose revenues are derived from both passenger and freight traffic in varying proportions.

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(Plaintiff's Exhibit No. 46, offered and received in evidence, is in words and figures as follows:) 690

Statement of Particularly Pertinent Parts of Bureau of Census Reports, With Regard to the Development of Interurban Electric Railways.

599 From "Special Reports of the Census Office, Street and Electric Railways, 1902, Department of Commerce and Labor," admitted in evidence by specific reference, In Utah-Idaho Central Railroad Company v. Dan B. Shields, United States Attorney,—No. 12294 Equity,—(R. 242):

"During the past few years there has been an extraordinary development of electric railways outside the limits of cities and villages, and a considerable proportion of these suburban and interurban lines are located on private rights of way and not on the public thorofare."

"The methods and service of some electric interurban lines already resemble those of the steam railways in many important respects."

"The conditions of business of the typical modern interurban railway differ so greatly from those of the ordinary street railway as to require special discussion. This subject has a peculiar interest because of the fact that the interurban business is of recent development, most of the faster and longer lines having been constructed within the past five years"

"The Central States, Ohio, Michigan, Indiana and Illinois possess the most extensive and efficient high speed interurban railways in the country and illustrate most clearly the future possibilities of this method of transportation."

"Much more remarkable has been the growth of freight
600 traffic on some of the lines. The report of the railway last mentioned shows that freight earnings are increasing by some 20 to 30% each year."

"The electric interurban railways possess in contrast with steam railroads several peculiar characteristics which directly affect their method of operation and these in turn determine the amount and character of their traffic."

"Small units and frequent service. The greatest difference between the electric and the steam railway lies in the fact that the former operates cars each of which has its own motors supplied with energy from a single distant source while the cars of the latter are moved by a separate locomotive which generates its own power. Steam operation, therefore, tends to infrequent service while electric operation lends itself to frequent service."

"Frequency of stops. The fact that single units of comparatively light weight are operated upon electric railways permits stops to be made much more quickly than with heavy steam trains, and likewise permits a much more rapid acceleration after the start. It is, therefore, possible for interurban cars to make comparatively frequent stops while maintaining high average speed."

"Operation in the streets of towns and cities. By running upon the public streets, when they enter a city or town, and by making frequent stops within municipal limits electric railways become usually much more accessible to passengers than steam railroads, which, as a rule, have only a single station in a town and that perhaps at some distance from its business center."

"Other advantages of electric lines for interurban service. Other peculiarities or interurban railway service, although they are of less importance, may be mentioned. One of these is the fact that the electric car can surmount grades and pass curves more readily than a steam train."

"To the agricultural population, as such, the steam rail-
601 ways offer no special conveniences. The farmer must go to town to take the train. If he lives on an electric railway the car may stop at his very door."

"In the Central West at least 75% of the interurban roads are located on private rights of way from 30 to 40 feet wide for single track on which a standard road bed is laid with 70 to 80 pound rails. As a general thing the electric roads have been less careful than the steam roads to avoid grades and curves. The bridge construction along such roads, however, is very often of a superior character, consisting of steel girder construction and comparing favorably with steam railway practices."

"The most extensive development of freight and express business has taken place on the interurban lines. Many of the cars on these roads are ordinary freight cars with brake equipment, etc. similar to that on steam railways."

"It has been held by the New York courts that a steam railway, as a common carrier, is bound to exchange freight with electric lines and to furnish the same facilities for doing so that it furnishes to steam railways."

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(Plaintiff's Exhibit No. 47, offered and received in evidence, is in words and figures as follows:)

"From "Special Reports of the Bureau of Census, Street and Electric Railways, 1907, Department of Commerce and Labor," admitted in evidence by specific reference, in Utah-Idaho Central Railroad Company v. Dan B. Shields, United States Attorney,—No. 12294, Equity,—(R. 243-244):

"The interurban companies frequently own their right
602 of way and hence in districts where interurban lines have been extensively developed a considerable portion of the track is on private right of way. Of the total increase in track during the five year period, which amounted to 11,826.57 miles, 60.6% was on private right of way. The new track on private right of way shows an increase of 188.6% over that of 1902. The statistics by geographic divisions show large increases in track on private right of way—for the Western

division 514.2%; the North Central division 218.9%; and the North Atlantic division 153.2%."

"The development of freight and express traffic on interurban and rural lines has resulted in a large increase in cars especially equipped for this service While the increases in trackage, capitalization, earnings from operation, etc. as shown elsewhere range from 50 to 70%, the increase in number of express, freight and mail cars and in income from freight business is over 400%."

Express, freight and mail cars in the year 1902 totaled 1,114. In the year 1907 they totaled 5,669. One electric railway in Illinois was exclusively engaged in the transportation of freight.

"The carriage of mail, express and freight matter is a comparatively new but rapidly developing branch of interurban traffic. Freight traffic on electric railways made rapid strides during the five years between censuses. The number of companies reporting a freight business increased by 75.4% and the income by 403.9%."

The total income reported from the transportation of freight in the year 1902 was $1,038,097; in the year 1907 it was $5,231,215.

"One of the leading features, if not indeed the principal one, of electric railway development during the period 1902 to 1907, was the extension of the interurban electric railways which are now to be found in almost every part of the
603 country, and which, in many instances, by the extent of their operations, rival main lines of steam railroad. In the report for 1902 considerable attention was paid to this development of which the various elements were discussed for the first time."

"From this survey of one or two different fields it will be seen how rapid and far-reaching the interurban development has been. One of the most active years in the entire period was 1906 when such an extraordinary development *occured* throughout the State of Ohio that by the end of the year there were in operation in the state at least 2600 miles of strictly interurban lines."

"Only a small proportion of steam railroads have thus far adopted the telephone, but with few exceptions interurban lines all over the country use the telephone system for train dispatching. From the standpoint of the interurban roads it has been noted the steam code of the American Railway Association did not meet all the conditions of street railway operation as satisfactorily as the other modified codes, the principal objection being that it is too cumbersome to adapt itself readily to the quicker movement made necessary by the passage of more frequent single cars or short trains upon which the interurban system is essentially based."

"The variety of freight and express carried is remarkable and includes all kinds of commodities and merchandise. One system reports as high a proportion as 52.9% of freight revenue.

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(Plaintiff's Exhibit No. 48, offered and received in evi-
604 dence, is in words and figures as follows:) 695

From "Central Electric Light and Power Stations and Street and Electric Railways, 1912, Bureau of the Census," admitted in evidence by specific reference, in Utah-Idaho Central Railroad Company v. Dan B. Shields, United States Attorney,—No. 12294, Equity,—(R. 244-246):

"For the period 1907-1912, the increase in track was 6,661.26 miles, of which 3,821.88 miles or 57.4% was on private rights of way. In districts where interurban lines are extensively developing a large portion of the track is now on private rights of way. Since 1902 track on private ways has increased nearly four-fold and such track now forms considerably more *then* one-third of the entire trackage."

Express, *frights*, mail and baggage cars in the year 1902 numbered 1,114. In the year 1907, 5,569. In the year 1912, 7,794.

In the year 1902 there were 3 electric locomotives reported. In the year 1907 there were 117. In the year 1912 there were 277.

In the year 1902 the revenues derived from freight, as reported, amounted to $1,038,097; in 1907 it was $5,231,215, and in 1912 it was $10,165,616.

"The growth in freight, mail baggage and express business was specially large in the Western Central division, both north and south and on the Pacific Coast."

"The development of interurban lines has brought in a large amount of freight and express business."

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Plaintiff's Exhibit No. 49

605 Condensed Statement of Plaintiff's Exhibit No. 4, which is the record before the Interstate Commerce Commission.*

Appearances:

Devine, Howell & Stine of Ogden, Utah, appeared for Utah-Idaho Central Railroad Company.

D. A. Mackenzie of Long Beach, Calif., appeared for Brotherhood of Railroad Trainmen.

Proceedings

Examiner Steer: The Interstate Commerce Commission has assigned for hearing at this time and place its Railroad Labor Act Docket No. 12, Utah-Idaho Central Railroad Company.

This proceeding was instituted at the request of the National Mediation Board, to determine whether the Utah-Idaho Central Railroad Company falls within the terms of the proviso of the first paragraph of Section 1 of the Railway Labor Act, as amended June 21st, 1934, which proviso reads as follows:

"That the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed, upon request of the Mediation Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

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*Exhibits referred to herein which are identical with those received by the court with like or different number are not set out but are included herein by reference to the court exhibit.

The carrier will introduce its evidence first, without
606 prejudice to any question regarding the burden of proof,
and others interested will then be afforded opportunity
to introduce their evidence. (Tr. 3)

Mr. Stine: Mr. Examiner, we wish to place this objection in the record:

Comes now the Utah-Idaho Central Railroad Company and objects to the jurisdiction of the Interstate Commerce Commission over this hearing and all matters involved therein, upon the ground that the Railway Labor Act was and is, under the Constitution, beyond the powers of Congress to enact; and upon the further ground that the National Mediation Board has no lawful power or authority to request the Interstate Commerce Commission to conduct this hearing for any purpose, so far as the Utah-Idaho Central Railroad Company or its employes are concerned; and upon the further ground that the National Mediation Board has no jurisdiction or authority over the Utah-Idaho Central Railroad Company, or its employes; and upon the further ground that the Railway Labor Act does not apply to the Utah-Idaho Central Railroad Company or its employes, and neither the Utah-Idaho Central Railroad Company nor its employes are in any manner subject to the provisions of the Railway Labor Act.

Examiner Steer: The objection will necessarily have to be overruled by the Examiner. The Commission always assumes that Acts of Congress are valid, unless and until otherwise determined by the courts.

Mr. Devine: Merely for the purpose of the record, we take exception, of course, to the ruling, on each of the grounds stated. (Tr. 4-5)

## Carrier's Evidence

607 P. H. Mulcahey, Ogden, Utah, testified as follows: I am General Manager of the Utah-Idaho Central Railroad Company, having been associated with that company since 1917. Prior to that I was connected with the Southern Pacific from 1909 to 1917, and from 1906 to 1909 with the old Wells-Fargo Express Company. As General Manager of the Utah-Idaho Central for the period stated, I have become entirely familiar with its operations and physical properties. The Utah-Idaho Central is operated by electric power, has no steam operation

whatever, and does not own any steam equipment of any kind or character. (Tr. 5-6)

Exhibit No. 1 is a general map of the Utah-Idaho Central, showing the territory served, and the various towns and municipalities through which it runs. This exhibit received in evidence, without objection. (See Court Exhibit No. 1.) Exhibit No. 1 shows in red lines the main line and branches of the Utah-Idaho Central, indicating that the line starts in Ogden, Utah, and runs through Box Elder and Cache Counties in Utah, and terminates in Preston, Franklin County, Idaho, with two branch lines, one running west in Weber County, from Harrisville to Warren, and the other west and south in Cache County, from Lewiston to Quinney and Thain. The exhibit likewise shows the various towns and stations through which the line operates. Between the station of Dewey, about in the center of the map, before the curve, and the station Wellsville, at the south end of the first curve, is a heavy grade known as Collinston Hill. This curve is required in order to permit a grade over which an interurban operation can get over that Collinston Hill. The distance from the bottom on the south side of the hill to the bottom of the north side is approximately 13 miles.
608 Collinston Hill is actually a mountain, a part of the Wasatch Range, and is the divide between the Salt Lake Valley and Cache Valley. The entire area from Wellsville, at the foot of the Collinston divide, on north, through and beyond Preston, for a distance of about 5 or 6 miles, is in one general valley which is known as Cache Valley. That valley is entirely surrounded by mountain ranges, except for the passes. Six miles out of 94 miles of main line lies within the State of Idaho. (Tr. 6-9)

(In reply to Mr. MacKenzie) It is the practice for steam railroads to lay out their right-of-way in a circuitous route in order to get more favorable grades, except for the fact that in the interurban railroad lay-out the route is a more difficult route, both as to curvature and grade, than can be accomplished by a steam railroad. In fact, I might elaborate on this particular point: A substantial portion of this grade line from Dewey to Wellsville many, many years ago constituted a grade line for a steam railroad, possibly seventy-five years ago, which was of necessity abandoned by reason of difficult grades and

curvature, and became unfit for what is known as a steam operation today. The maximum gradient is two percent. Steam railroads operate over greater gradients than that but it is not a proper steam railroad operation over two percent grade and ten and twelve degree curves. When it is possible, even very large expenditures are made to find a route with a flatter curve and less gradient. In fact, the curvature is possibly a more difficult factor for transcontinental operation than the gradient. (Tr. 9-10)

(In reply to Examiner Steer) The map shows that the Utah-Idaho Central parallels the main line of the Oregon Short Line Railroad as far as the station Dewey, which I have men-
609 tioned. Then the main line of the Oregon Short Line bears to the west. From Dewey on it bears to the west and goes through Bear River Canyon, in order to accomplish a more feasible steam route with less grade and less curvature, into the station known as Cache Junction, which is north of the curve on our line and west of what might be called tangent on the map. From Cache Junction the main line bears to the west and north, and there is a branch that goes from Cache Junction into Cache Valley, and parallels our line again from thereon. (Tr. 10)

The Utah-Idaho Central's lines are not located entirely on private right-of-way; a substantial portion is located on streets and county roads under authority of franchises from the various political subdivisions. That is illustrated by Exhibit No. 2, which contains the copies of the county and municipal franchises under which the railroad company operates. That exhibit starts from Preston south and includes all of the franchises from counties, towns, villages, and municipalities generally. (Tr. 11)

The first page in this exhibit is the franchise from the city of Preston, in Idaho, and the underscored wording is underscored for the purpose of this hearing, and to illustrate in this exhibit the thing that is common in each of the other franchises: That, first, the authority is granted to this Company to operate a single or double-track street and interurban railway. In Section 2 the restriction is put on the exhibit that the Company shall use electricity, compressed air, or liquefied

air, as motive power; and further, in that section it amplifies
that it shall be used for the purpose of running or oper-
610 ating such main lines of street or interurban railway.
In Section 3 again the franchise specifically refers to interurban line of railway and to street railways only. In Section 6 it again refers or limits this franchise to street or interurban electric railway. In Section 7 it specifically provides that steam shall not be used as a motive power in the operation of such railroad, except in the construction thereof, or for the movement of obstructions and disabled cars, and for the clearance of said railroad from all obstructions and from wreckage in case of accident. In other words, we are limited, in this franchise, to the operation only of a street and interurban railroad. We must use electric power or liquefied air, and we may not use steam except in emergency. This Preston franchise was subsequently amended, at page 3 of the exhibit, to permit the use of the highways for a bus operation, and refers in there again to electric railways, but carries no amendment amplifying or changing our limited authority to merely operate a street interurban electric railway and not to operate with steam. Our main-line railroad enters Preston, Idaho, at approximately the south city limits on the main street of the city, and operates due north into approximately a block of the main retail business section. We have practically no private right-of-way in Preston other than the main street of the city, except possibly for two or three hundred feet in turning off our main line into the city. (Tr. 12-13)

In substance, these franchises are identical through each town, city and village from Preston, Idaho, southward to and including Ogden. In the town of Smithfield we enter Smithfield on the main business street at the south city limits, and operate due north over the main street through the business
section, and leave Smithfield at the north city limits on
611 that same main business street. At the town of Lewiston we occupy less street than possibly any other town through which we operate, but we do operate within 75 feet, I would say, of the beginning of the business section of the city. In Richmond, we enter Richmond at the south city limits on a side street that is about 800 feet from the business section, and operate due north over that side street until we leave it at the north limits. Logan is the fourth largest city in the State of Utah, and with the exception of Ogden, the largest city through

which we operate. We enter the city of Logan at the south city limits on the main business street, and progress along that main business street to the north city limits, and leave the city there. That main business street is also a portion of the main north and south U. S. Highway No. 91, the Yellowstone Park highway. We enter Wellsville at right angles to their main business section, and occupy a side street until we come to the business section, make a sharp left turn, and operate along the only business street in Wellsville, and leave Wellsville City at the end of that business street. It is likewise true of Providence and Hyrum that our line is on the city streets. The rest of these towns, passing over the hill and coming down to Brigham City, are small towns. We are on the street for a short distance, but the Dewey street in only a short distance. Brigham City, as we classify it in Utah, it is a fairly good-sized town, and we occupy the city street for the entire distance through Brigham City. We enter Ogden on 17th Street and Lincoln Avenue. Lincoln Avenue is the street just 300 feet west of this building. We occupy that street right up to 24th Street. It is the other side of this city block, the next street. Our terminus in Ogden is within about a block and a half of what
612 is commonly considered the center of the business section of Ogden. I have nothing further to say on Exhibit No. 2, other than that each one of these franchises carries the same specific authority to operate there a street or interurban railroad, carrying the same limitation as to the use of electric power. (Tr. 13-16)

(In response to Mr. MacKenzie) I assume that some railroads also occupy city streets in passing through, but not under interurban franchises. (Tr. 17)

Exhibit No. 2 received in evidence without objection. (See Court Exhibit No. 2.) (Tr. 18)

Exhibit No. 3 details the corporate history and development of the Utah-Idaho Central. That exhibit received in evidence without objection. (See Court Exhibit No. 3). Exhibit No. 3 is a historical sketch of The Utah-Idaho Central Railroad Company and its predecessor corporations. The present Utah-Idaho Central Railroad Company is the result of the combination and ension of several small street-car and interurban properties. had its inception in Ogden, Utah, about 1890, from a street-

car system approximately three or four miles long, upon which was operated some horse-drawn cars. This company eventually became insolvent, and when liquidated its assets were purchased by a group of Northern Utah citizens, headed by the late David Eccles, who organized a corporation under the laws of Utah which was known as the Ogden Rapid Transit Company. This change took place in the late nineties and thereafter marked the beginning of the rehabilitation, electrification and further expansion of the properties which are known today as the Utah Rapid Transit Company, located within the corporate limits of Ogden City, and The Utah-Idaho Central Railroad Company, the interurban line in question. (Tr. 18-19)

Sometime in the late nineties a corporation was formed
613 under the name of the Ogden and Northwestern Railroad Company, which built a small interurban line of railroad from north city limits of Ogden along the country roads to Hot Springs in Box Elder County, and operated thereon for passenger and some freight business, their initial power being furnished by a small steam locomotive. The rails of this new company connected at the north city limits of Ogden with the rails of the Ogden Rapid Transit Company on Washington Avenue; the two companies jointly handling interurban traffic. Subsequently the same interests who owned or held control of the Ogden Rapid Transit Company acquired the ownership of the Ogden and Northwestern Railroad Company, and from that time on operated common equipment over both properties. Approximately in the year 1910 the Ogden Rapid Transit Company, as a corporation, acquired the property of the Ogden and Northwestern Company, and equipped the latter Company for an electric interurban operation, and also extended the line along the public highway from Ogden Hot Springs to Brigham City, Utah, which is located twenty-one miles north of Ogden, operating electrically over the entire line for the transportation of passengers and freight. (Tr. 19-20)

Contemporaneously with this development between Ogden and Brigham City, practically the same people who owned the Ogden Rapid Transit Company built a line of street and interurban railway in the City of Logan, Cache County, Utah, extending same northward through Hyde Park to Smithfield, Utah, a distance of about eight miles, and south through Providence, Millville and Hyrum to Wellsville, Utah, a distance

of approximately twelve miles, operating over this interurban by means of electrical power and handling passenger and freight business, the freight business being largely agricultural products produced in the vicinity of their line of rail-
614 road. About the month of May, 1914, the Ogden Rapid Transit Company, operating in Ogden City and from Ogden, Utah, to Brigham, Utah, and the Logan Rapid Transit Company, operating in the Logan City and between Wellsville, Utah, and Smithfield, Utah, were consolidated into a single corporation under the laws of the State of Utah, known as the Ogden, Logan and Idaho Railway Company. This corporation for a time thereafter operated all of the properties formerly owned and controlled by the Ogden Rapid Transit Company and the Logan Rapid Transit Company, and also, commencing about the time of the consolidation, rebuilt a portion of the line extending from Ogden northward through Brigham City, and constructed a new line from Brigham City north over the Collinston Divide into Cache Valley, connecting with the southern terminus of the Logan Rapid Transit Company. Also extending the northern terminus from Smithfield, Utah, to Lewiston, Utah, a distance of eleven miles, and eventually crossing the state line to Preston, Idaho, which lies approximately six miles north of the Utah State Line. The Ogden, Logan and Idaho Railway Company continued thereafter to operate the street-car system in the City of Ogden, the street-car system in the City of Logan, and also the interurban line which had been developed out of the interurban properties of the Ogden Rapid Transit Company and the Logan Rapid Transit Company, continuing to carry on the same general character of business of transporting both passengers and freight with electric cars. (Tr. 20-22)

In the latter part of 1919 it seemed desirable to segregate the interurban operations of the Company from the purely local street-car operations in the City of Ogden and the suburban operations extending east from Ogden City into Ogden Canyon.
615 Accordingly, a new corporation was formed, known as the Utah Rapid Transit Company, which took over and operated the local Street-car system in Ogden, Utah, and the suburban line running east from Ogden into Ogden Canyon. The ownership and operation of the interurban railroad from Ogden, Utah, to Preston, Idaho, remaining with

the Ogden, Logan and Idaho Railroad Company, which has changed its name to Utah-Idaho Central Railroad Company. Utah-Idaho Central Railroad Company, a Utah corporation, continued to operate these interurban lines until the latter part of the year 1926, when a corporate reorganization took place and the properties were then continued under the ownership and operation of The Utah-Idaho Central Railroad Company, a Delaware corporation, which is the present owner and operating company. (Tr. 22)

*Throughout* all of these developments of this interurban property through the various companies previously named, the personnel of its employes and owners has to a very large extent remained that of the original street-car and interurban companies, namely, the Ogden Rapid Transit Company and the Logan Rapid Transit Company. (Tr. 22-23)

(In reply to Examiner Steer.) There are no steam railroads or other railroad companies directly or indirectly affiliated in the ownership of the Utah-Idaho Central Railroad Company. (Tr. 23)

No official of the Utah-Idaho Central Railroad Company holds official positions with any steam railroad company. No bonds or stock of the Utah-Idaho Central Railroad is owned directly or indirectly by any steam railroad company, or any other railroad company, or any holding corporation, or any persons interested in any steam railroad. (Tr. 23)

(In reply to Mr. MacKenzie.) Amplifying the last para-
616 graph of my statement regarding the personnel remaining largely the same through corporate changes, I might say that this venture is the result of purely local efforts on the part of citizens of northern Utah to develop northern Utah through the furnishing of the type of service peculiar to interurban railroads. In our growth from small interurban railroads and street-car companies, as I have outlined previously in this exhibit, these same people have continued, to a large extent, as owners and investors of the present property, and in many, many cases, except where age has created a bar, even the same employes, some who originally worked on the old Ogden & Northwestern, are still in the service of the Company. There has been no change in the character of the

Company during all these amalgamations. As indicated here, the city lines in Ogden City were in 1920 incorporated under the name of the Utah Rapid Transit Company. Those employes maintain their own seniority rights. The city operation in the City of Logan has been converted into a city bus operation, and those employes hold seniority rights, according to their qualifications, on either the interurban or the Logan City lines, as we call them. (Tr. 24-25)

But our seniority rights in recruiting our employes date back to the time when it became a street-car system. In other words, the employes that worked thirty-five years ago on the Ogden street-car company, and elected to qualify in the interurban operation, maintain their seniority, dating back from their first employment in the Ogden street-car company. (Tr. 25)

(In reply to Mr. MacKenzie) Their seniority in the service of the Company and in the choice of the interurban runs, and for the various purposes seniority is used and is valued. It goes back to their original employment in the street-car company. The employes operating the local street-car lines here do not have the right to exercise their seniority for like positions on the interurban line. As I explained, the
617 local Ogden Street-car Company is now a separate corporation, but the employes on the Logan City service have the right to exercise, according to their qualification and seniority date, on the interurban line. (Tr. 25-26)

(In reply to Examiner Steer) The average number of employees in 1934 as reported to the Interstate Commerce Commission was 150. (Tr. 26)

(In reply to Mr. MacKenzie That is the total number of employees in the service of the company, including the interurban line and the Logan city service and the bus operation that I mentioned. (Tr. 26)

No transcontinental or steam carrier has any holdings, directly or indirectly, of any kind or character, monetary or otherwise, in this company. No operating officer of this railroad is directly or indirectly connected, or has any relationship of any kind or character with any steam or transcontinental carriers to my knowledge, and if there was any such I would know it. Other carriers have no direction of the movement

of our trains, the movement of our business, or control ove it, in any manner or at all, and the operation of the Utah-Idah Central is totally and absolutely independent of any carrier connecting or otherwise. (Tr. 26-27)

(In reply to Mr. MacKenzie) When capital expenditure are involved, it is necessary for the operating officials of th Utah-Idaho Central to consult the Board of Directors, a ver large percentage of whom are local residents of the State o Utah. The Company has never in its history received advance from any other railroad carrier or any department or branc of the United States Government. (Tr. 27-28)

The rail and bus lines that have been mentioned are owne and controlled by the same corporation. The bus em
618 ployes are men who have operated on the railroad, an have interchangeable seniority with the rail operation (Tr. 28)

Exhibit No. 4 received in evidence without objection. (Se Court Exhibit No. 4) This exhibit is a description of the pur pose and method of operations of The Utah-Idaho Central. A indicated in the history of the corporate development, the prop erty, as now exists, was practically completed in the latte part of the year 1915 and represents, as previously explained the joining together of individual small interurban railroad previously constructed in Cache Valley and in Weber and Bo Elder Counties. These roads were practically entirely finance by local citizens in the Northern Utah area who were collec tively interested in the various agricultural and agricultura manufacturing pursuits which are common to this section, suc as dairying and milk processing, sugar beet raising and suga manufacturing, canning, livestock, poultry, fruits, vegetables etc. These people were naturally also interested in the eco nomic, cultural and educational development of the variou small communities which are now contiguous to this interurba railroad. Their idea in the construction of the constituen properties, and in the later joining together of these pro erties into one line, was to furnish an easy, convenient metho of intercourse between these communities, and also to furnis a method of transporting the raw products grown in the are to the agricultural processing and manufacturing plants whic they developed within the area. This requirement could

best and most satisfactorily served by the construction of an interurban electric line, with its consequent frequent and rapid passenger service and its natural ability, by reason of its type, to provide a convenient and economical method
619 of moving raw products at frequent intervals, and over short distances, to the processing plants. (Tr. 29-30)

This type of service was and is distinctly within the physical scope of an interurban railroad, in that, as will be later shown, its entire physical construction was designed to accommodate small trains, rapidly moving, at frequent intervals, and it is a character of service not possible of being furnished by the ordinary steam railroad, in that a major requirement of steam railroad operation is long trains and a service largely influenced as to schedule by the availability of sufficient tonnage to approximate the rating of the power used. The continual development, in steam transportation, of larger power with its consequent longer trains and longer intervals between those trains, creates a physical condition which cannot be adapted to the type of service performed by an interurban railroad. To illustrate this point, such services as the following have been performed by The Utah-Idaho Central Railroad Company: The handling of raw milk from concentration points to condensories. This service must be performed with a minimum of time en route and a definite arriving time at the condensory to fit in with their daily evaporation program. This movement is generally accomplished with the power unit and one car, and usually entails special service. This Company has also performed a service of moving shelled peas from vineries to canning factories. In the canning of peas it is necessary, in order to preserve their natural flavor, that a minimum amount of time be consumed from the field to the cannery, peas being harvested in the fields, taken to the vinery for shelling, and moving in lug boxes rapidly into the cannery before either time or temperature can start the change in flavor. This
620 movement likewise was accomplished with one or two car trains and special service. Another typical interurban movement is the handling of ripe tomatoes in stock cars for movement into the canning factory, usually with special service. Large quantities of beets are handled from various loading stations in small trains to the sugar factories for processing. These are only typical of the type of service performed, and generally represent the transportation link of

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the industrial development contemplated as a unit by the same people who constructed the processing plants at the same time they constructed this interurban railroad. (Tr. 30-32)

Later on in the presentation an exhibit will be introduced showing the number of trains operated daily on this property, which in itself will present a more concrete picture of the frequency of service actually used in the operation of the property. Likewise there will be presented exhibits showing the large number of sidings and spurs available for the loading of raw products, and one showing the frequency of available passenger stops for the convenience of short distance interurban travel. The Company at the present time, in addition to the operation of numerous small freight trains, operates both one and two-car interurban passenger trains and gasoline motor buses. A distinctive feature in our interurban passenger operation, which tends to illustrate the type of service furnished the communities involved, is the transportation of school children. The providing of educational facilities in this section is through the location of high schools at central points, rather than in each community, and in the carrying out of this policy, at public expense students are brought from their home to these centrally located schools. Our interurban operation fits well into this plan, in that very large numbers of these students are transported by this interurban service, at a small cost, from their homes to these central schools, as will be shown in a later exhibit. This travel amounts to from 175,000 to 210,000 passengers per year, and is largely accomplished through the operation of short distance special school trains. The Company operates both an interurban bus service, generally paralleling its line of railroad, and a local bus service serving the Utah State Agricultural College at Logan. (Tr. 32-33)

621

For many years pick-up and delivery service has been rendered at all available points in connection with package freight. A daily package merchandise train is operated, *maing* a round trip from Preston, Idaho, and returning during the night hours. This train is powered by an interurban electric car constructed so as to make a large portion of the car available for the handling of package freight. Each car also, being equipped with refrigeration facilities for the handling of perishable commodities in summer weather, and with heating

facilities for their handling during the winter weather. The locomotive unit on this train is likewise sufficiently powered to permit the hauling of other cars of package freight. (Tr 33)

As will be shown in a later exhibit, a substantial portion of the mileage of the property lies on city streets and county roads. In the cities and towns of Mendon, Wellsville, Logan, Hyde Park, Smithfield, Richmond, Lewiston, and Preston, the main line runs on the principal business street. In the City of Ogden it comes within one block of the heart of the business district, and in the other communities through which the Company operates, their main line is on public streets in very close proximity to the principal business section. As has been shown in the previous exhibit, the right to occupy these city streets and to operate through these business districts is limited to an electric interurban operation, which in itself is a legal barrier against the operation of long freight trains or an operation of the same general character as that of so-called steam railroads. (Tr. 33-34)

(In reply to Mr. MacKenzie.) My experience in this State is that the steam railroads in the dairy section of Utah have never rendered a rail service of transporting fluid milk to the condensers. My experience is likewise that the steam railroad has never rendered the service of transporting raw peas to the canneries. The only service that they render, which I have mentioned here, is they render the service of transporting sugar beets to the factories. The difference in their type of service is that particular operation is that they usually spread their empties in the morning and go through at night with a very long train, making a simultaneous delivery of the entire loadings on their area, as distinguished from our type of operation of operating small units, furnishing additional units at practically any time of the day, and bringing the loads in in small trains and at frequent intervals. I think that the frequency of service is an outstanding difference between steam railroad operation and interurban railroad operation, and is the reason for the usual intensified development in the interurban territory, and the reason for the extraordinary truck development in steam railroad territory, as compared with its development in interurban railroad territory. I would not say that if the steam railroads could give better service, they would get more of the business. Steam roads are not physically constructed to give the type of service that is given by the interurban railroad.

consequently unless you have an interurban railroad
623 that is so physically constructed and operated to give that intensive service, it is an invitation to truck development. I think that is recognized all over the United States, at least the western part of the United States, that I am familiar with. I understand that some few railroads have experimented with a pick-up and delivery service for less-than carload shipments. I likewise understand that only in a very limited way is that service furnished in the State of Utah. There have been some discussions, over a period of years, that it might be furnished, but it is not furnished now except in a limited way. We have been furnishing it for quite a few years. (Tr. 34-36)

As a preliminary to the introduction of Exhibit No. 5, I might observe that this exhibit is one of a series which pictures to the Commission the physical construction and characteristics of this property, and is designed to show that physically there is such a transportion unit as an interurban railroad, and that it is a completely developed unit, carrying distinct physical limitations and characteristics, as distinguished from a steam railroad. This particular exhibit is a description of the motive power of the Utah-Idaho Central Railroad. We have in our larger locomotive units five 900 class freight hauling units. These are 50 ton Westinghouse electric locomotives, designed for 750-1500 volt operations. They are equipped with four Westinghouse 562 A-5 motors, with Westinghouse control. The next two descriptions of these locomotives are purely technical factory descriptions of the type. Under the heading on this exhibit, of "North-bound 900 Class locomotives," there is shown the factory rating of this locomotive over the various mileage sections of our railroad, the practical rating of the locomotive, the grade, and the degree of curvature. (Tr. 37)

I might explain the difference between the factory rat-
624 ing and the practical rating: The factory rating is a technical mathematical rating of these locomotives under the conditions produced by the curvature and by the grade. Obviously it is impracticable to take a power unit in a train and continue to increase or reduce its tonnage every few miles, in order to closely adhere to the factory or technical rating. The method of operation, and particularly on a line such as ours,

with such broken grades and sharp curvatures, is to determine a practical rating over which you can get the maximum efficiency with the facilities available. The effects of these ratings are graphed in a later exhibit, and, for the saving of time, I might omit going into the detail. (Tr. 37-38)

I will take, as an example of the difference between the factory rating and the practical rating, the first eight lines of the exhibit. It shows a fluctuation in the factory rating from a maximum of 1000 to a minimum of 250 tons, to a minimum of 230 tons, on the eighth line. That 230 ton minimum on technical mathematical rating is occasioned by the 2 per cent adverse grade for a distance of 1.7 miles. The practical rating of these locomotives for that entire distance is 550 tons, on the theory that if the locomotive is not operated to its maximum allowed limit, at each point available, it will produce a higher temperature in the motors. It is possible to operate, for short distances, the locomotive away beyond its maximum limit, because the short distances and the time involved does not produce a temperature injurious to the equipment. So years of experience have indicated to us that the practical rating of that locomotive from mile point 0 to mile point 20.4 is 550 tons. That same example, in various degrees, will take care of the difference between the practical and factory ratings. (Tr. 38-39)

We have the same information with reference to our
625 500 class passenger-hauling motor cars. The tonnage rating on these motor cars, insofar as passenger service is concerned, is not particularly important, in that our type of passenger service furnished calls for one and two-car operation, which is well within the limit of the power of the equipment. For our merchandise service it is the same class of passenger-hauling units with the different gear ratio. The tonnage rating on those units being important, in that it develops the amount of merchandise that can be hauled in one unit. However, those cars never being intended for heavy freight hauling, their power is quite restrictive, and on one particular portion, as indicated on page four, their north-bound capacity is only 90 tons. Their maximum capacity north-bound is only 175 tons. South-bound it has the same limit. (Tr. 39)

(In reply to Mr. MacKenzie) We have five 50-ton freight locomotives, two smaller 35-ton freight locomotives, and three similar to the 500 class car, which are the passenger type of

equipment, constructed and designed for the hauling of package freight. Those are the units I referred to in my general statement as carrying heating facilities in the winter and ice refrigeration facilities in the summer. The capacity of the locomotives is the tonnage limit set out on the bottom of page 1; and on page 2 and the top of page 3 the air capacity at the limits, the number of cars, over these grades, no matter what the tonnage is. To give an absurd example but illustrative, if the cars only average a ton apiece, the 35 cars would be 35 tons and considerably under the tonnage rating, but then restricted by the air capacity. I don't know of any occasion when we handle as high as 45 cars in a train. As will be later shown, our average is so much less than 45 that in seventeen years I know of no time we have handled that many. It would be hard for me to even assume anything approximating that. (Tr. 40-41)

626 (In reply to Examiner Steer) We very seldom operate our freight trains with more than one locomotive. We have had occasions where we have used, in emergency, a helper locomotive, but that is usually where it has been necessary to deadhead power, and we can add a few more cars on a train and cut in the extra power at the heavy grades; but it is not our practice. It is not economical, and we hardly think it is feasible. We have the physical situation. The length of our trains and the tonnage of our trains is restricted by other elements, that will be shown later, which would preclude us from just trying to get enough power to haul all the cars we could get. These practical ratings on cars, shown on Exhibit 5 are based on an average weight of 45 tons, on the theory that our trains would be made up of half loads and half empties, and we have endeavored to arrive at a reasonable average, through tests of various trains of the average gross weight of each unit in a train. If you are hauling a train of empties, it would have the capacity to haul a large number of cars up to the limitation of the air capacity, or as was just explained a moment ago. Our electric locomotives are inspected by the Interstate Commerce Commission. Exhibit 5 received, without objection. (See Court Exhibit No. 5.) (Tr. 41-42)

Exhibit 6 received in evidence, without objection. (See Court Exhibit No. 6.) Exhibit 6 is a list of the equipment owned by the Utah-Idaho Central, a brief description of the equipment, information as to whether this equipment is interchangeable

with steam railroads, and the reason, the exhibit shows,
627 that we have aggregated all seven locomotives—50 tons, 45 tons, which are not interchangeable with steam railroads, due to the fact they are interurban electric locomotives. The exhibit likewise shows we have two self-propelled express cars, two self-propelled merchandise cars, fifteen self-propelled passenger cars, all of which are not interchangeable with steam railroads, by reason of the fact they are interurban electric equipment. We have seven passenger-carrying trailers, which are not interchangeable, by reason of the fact that they are interurban type of equipment. In freight equipment we have two gondolas, one flat car of 20,000 capacity, twelve flat cars of 60,000, fifteen box cars, twenty-two ballast cars, three ventilated box cars, seven refrigerator cars, twelve stock cars, all of which are not interchangeable with steam railroads, because of their wooden construction and their lack of A.R.A. brake rating. We have one steel flat car which is interchangeable with steam railroads, and ninety-eight beet and coal gondolas which are interchangeable. Those ninety-eight cars were purchased in order to take care of local movements on our line, but are of a type of equipment that may be interchanged with steam railroads. (Tr. 42-44)

(In reply to Mr. MacKenzie) The Company interchanges standard equipment with the steam railroads with which it connects. We receive from them and return to them standard equipment, standard freight equipment. The object of this foreign line equipment is that it enables the company to do a much greater freight business than it could do with its own equipment. The foreign line equipment permits us to originate a substantial portion of the freight, which without the use of that equipment we would have to provide our own equipment for. (Tr. 44)

(In reply to Examiner Steer) Our freight traffic that
628 is interchanged with other railroads is handled in their equipment, or in foreign line equipment largely,—well, practically all except this one flat car might be interchanged or some of these coal gondolas might be interchanged. (Tr. 44-45)

Exhibit No. 7 received in evidence, without objection (See Court Exhibit No. 7). This exhibit is a statement of sub-station power on the Utah-Idaho Central Railroad. All our power

is electrical power purchased from the Utah Power & Li
Company, and received at four separate sub-stations, which
the source of our energy. This statement shows the equipm
of these various sub-stations, and it shows the limit load of
station, adjusted to the grade characteristics in the territ
contiguous or served by that sub-station. It indicates that
first South sub-station, on interurban operation, we have
500 K W motor generator set, which will carry a 500 ton lo
Our next station north, Mile Post 9, at Hot Springs, has
500 motor generator set which will carry a 550 ton load. O
next station, Dewey, Mile Post 36, at the foot of the Collins
Divide, is equipped with two generator sets of 500 ton capac
but the combined sets will only carry a 550 ton load; the r
son, of course, being that the heavy grade crossings imme
ately north of this station restrict its carrying capacity. T
last station, at Smithfield, Utah, Mile Post 75, has two mo
generator sets of 500 K. W. capacity, this station being locat
in a relatively level territory, and will carry a 1000 ton lo
I might explain a little further that when we say a 500 ton lo
at a station, or a 1000 ton load, it means that within the radi
that that station furnishes power, the aggregate freight a
passenger load, or the aggregate power load, combined, can
exceed more than an aggregate of 500 tons in all trains with
that radius. (Tr. 45-46)

629 Exhibit No. 8 received in evidence, without objecti
(See Court Exhibit No. 8). Exhibit No. 8 is a b
statement of the character of track construction on
Utah-Idaho Central Railroad. I might say that a disti
characteristic of an interurban railroad is light constructi
designed for small trains and rapid movement, and it is d
tinctly,—that is, an interurban railroad is a type of constr
tion that could not accommodate large trains or typical ste
railroad operations. This exhibit shows we have a main-li
mileage of 94.63 miles, 11.19 miles constructed with 65 pou
rail; 83.52 miles of 70 pound rail; and 2.26 miles of main li
with 85 pound rail. We have a branch-line mileage of 21
miles, of which 20.39 are constructed with 45 and 48 pound r
and .73 of a mile with 65 pound rail. We have an aggreg
mileage of 36.93 of sidings and spurs. Out of that aggreg
1.45 is 45 pound rail, and 26.19 is 48 pound rail, which is by
the substantial percentage of our entire siding mileage. T
balance is divided into 60 pound rail, 2.56; 65 pound rail, 3

70 pound rail, 2.0; 75 pound rail, 1.15; 85 pound rail .06. The heavier rails in the siding construction are all in the turn-outs. Of the total mileage there is only 11.3 miles of the railroad tie-plated. That is in the area of heavy curvature or lightness of the rail. In the main line the absence of tie plates and the extreme lightness of the siding rail would preclude any type of operation except what is distinctly an interurban operation of small trains, small motive power, light equipment, but it is perfectly adequate for the purpose of an interurban railroad, with some small trains, light equipment and frequent service. The railroad is built with 6 x 8 x 8 cross-ties, which are substantially smaller than those used in heavier transcontinental operation, and they are spaced at 2 feet centers. It is probably wider spaced than necessary in transcontinental steam railroad operations. (Tr. 46-48)

(In reply to Mr. MacKenzie) All the property is standard gauge. (Tr. 48)

(In reply to Examiner Steer) While some of the steam railroads going over the Rocky Mountains and over the Sierra Nevadas have as heavy, and possibly in one or two cases heavier grades, the combination of grade and curvature on our railroad is much more severe than the grade and curvature on the road paralleling us, or than is considered good practice, if it can be avoided, on transcontinental lines. Our maximum main line curvature is—I think our sharpest curve is 12 degrees, and we have quite a few 10's and 9's and 8's. We have some 10's, reversing into 10's, which is a condition which is always avoided in steam railroad construction, where possible. (Tr. 48-49)

Exhibit No. 9 received in evidence, without objection (See Court Exhibit No. 10). Exhibit 9 is a list of spurs, sidings and passing tracks on the Utah-Idaho Central Railroad, showing their capacity in cars. The short-train type of service is a distinguishing characteristic of the interurban operation, and calls for frequent passing tracks and spurs, but of short capacity. It will be noted on the three pages which show the individual limits and the mile posts of these various spurs, the extreme frequency of their location, averaging approximately only one or two miles apart. On the last page it shows that the maximum length of any passing track or spur on this

railroad is 32 cars, with a minimum length of 2 cars. The average length of all is 16 cars. The size of those spurs is a definite limiting factor on the type of operation. It is perfectly adequate for interurban operation of our character, but is totally inadequate for a general steam operation. (Tr. 49-50)

631 (In reply to Mr. MacKenzie) That is under present-day conditions; and the same statement would be true under the operating conditions at the time this interurban railroad was developed—very practical at that time. I am familiar with the fact that in past years practically all of the steam railroads had sidings of 30 car capacity. I am also familiar with the fact that at the time this interurban was constructed, for years previously, the steam railroads were then hauling trains 60, 75 and 80 cars long. Today they are hauling them 125 and 150. At the time they were hauling 50, 60 or 75 car trains our sidings and spurs would have been totally inadequate for their type of operation. (Tr. 50-51)

Exhibit No. 10 received in evidence, without objection. (See Court Exhibit No. 11.) Exhibit No. 10 is a statement of the miles of main-line track located on the public streets and public highways along the line of the Utah-Idaho Central Railroad. In total it shows that the total mileage located on public streets and public highways is 20.64 miles, or 18.2 percent of the entire mileage. Briefly, going down the exhibit, only in the last column, there is .93 of a mile located on the public streets of Ogden, right into the main business section, as previously explained; and .8 of a mile in the city of Willard is on the public streets, in other words our entire mileage within the city; .46 of a mile in Perry; likewise our entire mileage. In Brigham City 2.02 miles is located on the public streets, and is our entire mileage in Brigham City. Honeyville, .19 of a mile located on the public street, and that is about the length of the public street. Likewise in Mendon, 1.07; and at Wellsville .88, that runs right through the business section; Hyrum .45; Millville, .60; Providence .53; and Logan, which is the

632 fourth largest city in the State of Utah, has 1.98 miles entirely lying on their main business section; Hyde Park .81; Smithfield 1.98; Richmond .72; Preston .68. On our branch lines—on the Plain City branch there is an aggregate of 4.79 lying on county highways. There are no cities involved on that branch. The Plain City Junction to Warren,

.35; and on the Quinney branch 1.4 lies on county roads. Now, I might add that all of that 20.64 miles is restricted as to the character of operation, by our franchises, which is our only legal right to operate on this 18 percent of our mileage, and we are restricted there to an interurban operation and to the use of electricity. Lincoln Avenue, on which this road comes into the city of Ogden is one of the principal north-and-south highways within the city, being a business and residential street. In Logan our line is on Main Street, which is the principal street and might be called the only business street. We operate the entire length of the business area, and the balance is through prime residential portions of the same street. (Tr. 51-53)

(In reply to Mr. MacKenzie) No steam railroad operates over the streets as we do under our restricted franchises and type of operation. It is hard for me to conceive that the city of Logan, or any of these other cities, would permit a steam railroad operation over such streets. (Tr. 53-54)

Mr. Devine: It is true, Mr. MacKenzie, that steam railroads operate over city streets, but if you go back to the history of it you will find the railroad was there before the street was there. We will take Rock Springs, Wyo., for instance, or Evanston, Wyo., or a lot of the rest of those towns, and the railroads made the streets, not the streets the railroads. (Tr. 54)

633 I know of no steam railroad operating on the public streets or principal business streets in Utah under franchise. All of our limitations in this operation here are governed by the laws of the cities and of the muncipalities of the States of Utah and Idaho. (Tr. 54-55)

Exhibit No. 11 received in evidence, without objection. (See Court Exhibit No. 12.) Exhibit No. 11 contains photostatic copies of the blueprints or station plats of the Utah-Idaho Central, showing the restrictive curvature of turnout sidings and spurs. Likewise another limiting factor to railroad operation is the degree of curvature of its various sidings, turn-outs and spurs. An interurban railroad, by reason again of its small trains and its typical character of operation, can operate on a very much sharper curvature and sharper turn-outs than a steam railroad. Going through just a few of these as repre-

sentatives, we have our Ogden terminal, which is the southern terminus of this property, which you will note has turn-outs off the main line from 150 radius and 200 radius, that all the turn-out frogs are from No. 4 to No. 4-5/8. I am informed that the lightest turn-out frog used by the normal steam railroad is a No. 7 turn-out. You can move switch engines on a 150 foot radius, but I don't think any of the road power or equipment used by steam railroads could conveniently, or at least efficiently operate around such a curvature. On the first page of this exhibit the large blank space at the bottom is our passenger station, which adjoins this Federal building on the west. Our railroad terminal, which is sought to be declared a transcontinental railroad terminal, is located right here in this city block. (Tr. 55-57)

634 (In reply to Mr. MacKenzie) We operate standard steam railroad freight cars. We do not haul standard steam railroad passenger cars or standard steam railroad locomotives. In fact, I am informed by the engineer for the Southern Pacific that in order to accommodate the 2800 class Consolidated engine it would require a 22 degree curve or 260 foot radius, as against our 150 and 200. That is not because of the difference in the rod of the steam locomotive—it is the difference between the typical steam railroad and our railroad. Our curvature is built to accommodate the type of equipment that is peculiar to interurban operation. Their curvature and railroad are obviously built to accommodate the type of equipment that is peculiar to steam railroad operation. It is because of this type of construction that interurbans perform their intensive developing service, as contradistinguished from the rail transportation service performed by a steam railroad. (Tr. 57)

The next thing on this exhibit that I wish to call attention to is the lead to one of our interchanges with steam railroad, the Denver & Rio Grande. You will note that lead is a 29 degree curve, or 199 foot radius curve. The following one is a lead into the American Canning Company. That is possibly the sharpest curve on our railroad. It has a 100 foot radius curve leading off with a No. 4 frog, and a No. 4 frog, in order to refresh my memory, is a 150 foot radius curve. We lead off with a 150 foot radius and sharpen up to a 100 foot radius. There are some types of standard steam railroad freight equipment that it is difficult to get around this curve. (Tr. 57-58)

(In reply to Mr. MacKenzie) There isn't any that is barred, but there is some type that we may only take around on a single trip with a locomotive. We can't take it around coupled with any other equipment. For instance, some of the new, long box cars that are commonly used for handling cans. They are about the type of automobile cars. They have a big car in order to get this light material in it. (Tr. 58)

The fourth sheet in this exhibit is our shops and freight yards. I might call your attention to the fact that the entire leads into the shop and freight yards are accomplished with No. 4 turn-outs, which are 150 foot radius. The entire turn-out to these yards, which are to our main freight yards and our shop facilities, the leads are No. 4 frogs, which is 150 foot radius, with some 4¾, which are slightly less than a 200 foot radius, with only one 5½, and that 5½ is the 338 foot radius curve. Again, this property is restricted even in its entrance to its repair facilities and its freight yards, where the trains are made up, to equipment that will successfully pass over sharp curvature. On sheet 5, at Harrisville, we show a restricted curvature down to a radius of 190 feet, and another one with 231, with a maximum radius of 359 feet. There is no type of freight equipment barred. The restriction is on the power unit. At Willard, Utah, No. 6, the restriction there is No. 4 frog, which is 100 foot radius, and also a curve turn-out with 150 foot radius. No restrictions on freight equipment, but definite restrictions on power equipment. To make that a little clearer, you must use power small enough that you can't haul large trains; you must haul small trains. And that is definitely interurban. At Brigham we have a No. 5½ frog, but the curvature itself is 150 foot radius. No restrictions on freight equipment, and the same explanation on power. The fruit growers' spur at Brigham has 176 foot radius curve.

At the Brigham yards, which is one of the larger stations on our railroad, all of the leads into the Brigham yard are 150 foot radius curves, and all of the frogs are No. 4 frogs, which likewise is 150 foot. No restrictions on freight equipment, and the same restrictions on power. (Tr. 59-61)

At the Dewey yards—and this is a little more important than the others, because on this railroad we only have Wye's, one located at Ogden, one located at Dewey, one located at Logan, and one located at Preston. This wye is the one available at

the south end of the Collinston Divide. The wye is restricted as a turn-out to a No. 4 frog or 150 foot radius and on the curvature of the wye itself for 176 foot radius. It is impossible for us to wye any equipment here that will not accommodate itself to that curvature. It does not impose a restriction on freight equipment, but it imposes a very definite restriction on power equipment, and likewise it requires the use of snow-fighting equipment which will accommodate itself to this curvature. This is the station south,—immediately north of which we have our maximum snow condition or snow trouble. If I might state, while it is in my mind, I would like to correct that statement and add there is another wye on the other side of the hill at Mendon. All of the physical conditions would preclude the use of such snow-fighting equipment as used on transcontinental roads, requiring rotary equipment. The wye at Mendon is on the other side of the Collinston Divide. It is restricted in the turn-out to a No. 4 frog, which is a 190 foot radius. The curvature itself is sharper, 176 foot radius, and carries the same limitations and restrictions as explained in reference to Dewey. (Tr. 61-62)

At Wellsville we are restricted there to a 39 degree
637 curve, or a 150 foot radius. At Hyrum we are restricted to the sharpest curve, 231 foot and 236 foot. At Providence, Utah, 287 and 295. These curves reverse into each other. At Logan, Utah, which is the largest city, with the exception of Ogden, on our line, and in which we operate along the main business section, we turn off of the main business section on a 245 foot radius. Our Logan yards have no turn-outs lighter than the No. 4 frog. We have one that is sharper, 3-5/16, and the No. 4 frog means 150 foot radius. The Logan yard likewise has curves, other than the frogs themselves, as sharp as 136 foot. There is a wye at Logan, on the extreme right of the exhibit, which on both sides or both legs of the wye is 100 foot radius or 60 degree curve. That is as sharp as the curve at the American Canning Company. On this curve there is some type of freight equipment that is extremely difficult to wye on the 100 foot radius. If there is any binding action at all it will tend to climb. (Tr. 62-63)

(In reply to Mr. MacKenzie) There is no restriction on freight equipment at Wellsville and Hyrum and Providence; I mean by that the freight cars themselves. On this wye at Logan

you not only have to be careful to go around the curve at slow speed, but if you have long cars, with heavy loads, you have to take them around singly. They are not at the present time barred from going around there, but it is a very definite limitation that is peculiar to a railroad built with sharp curves. If you had fifty of them you would have to take fifty trips around there to get the train out. (Tr. 63)

That necessity for single-car handling on long box cars is only where the degree gets below 150. With our type of motive power, and with very slow movement, we can accommo-
638 date trains of the size we haul on most any curvature from 150 up. When you get down to 100 it is a definite trial. The next sheet is an amplification of an extension of the Logan yards, which shows restrictions there, No. 4 frogs universally, a curvature of 141 and 195, the flattest curvature being 287, with several of them considerably sharper. There are no restrictions on freight equipment. The next one is the North Logan spur, which has a 187 radius and 31 degree curve. The next one is Smithfield, Utah, which has only a 33 degree, 150 foot radius curve. The main lead from the main line being a 115 foot radius, at that curve also we have very definite trouble with long, high box cars. They have to be moved generally one car at a time. Otherwise no restrictions on the freight equipment itself, but the same limitation on motive power. The next, at Smithfield, is the pea factory spur, 287 foot radius, a relatively flat curve for this railroad. The next one is sheet 1 of the Richmond milk spur, which has the sharpest curve, 199 foot radius, or 29 degrees. Sheet 2 has a 231 foot radius. There are no definite restrictions on freight equipment in connection with the pea factory spur, the Richmond milk spur, and this Richmond farm spur. At Lewiston, Utah, the controlling curvature there is the No. 4 frog, which is 150 feet radius, and flattens out to 231 feet on the curve itself. At Preston, Idaho, the first sheet of Preston shows a 287 foot radius, but somewhat restricted by a No. 4 frog, which is 190 foot radius. The second sheet of Preston shows the Preston wye, which on the north leg is 199 foot radius and on the south leg is 287 foot. Of course, the use of the wye, for wye facilities, is restricted to the curvature on the north leg, or 199 feet, and the No. 4 frog for turn-out. The Preston yard has en-
639 tirely No. 4 frog or 150 foot radius, and the curvature is generally, with the exception of the south leg of the

wye, is generally from 150 to 199 foot radius. There are no definite restrictions against the use of freight equipment at Lewiston and Preston. (Tr. 63-66)

(In reply to Examiner Steer) Referring to my comparisons of the physical conditions on our railroad with the trunk-line railroads, such as the transcontinental railroads, I think the situation would be similar if you compared the Utah-Idaho Central with a steam railroad of similar or comparable length and size. Unquestionably the contrast would not be as sharp, but outside of narrow-gauge steam railroads the type of power used, the type of service furnished, I think you will find the same general distinction between interurban construction and interurban operation, between a smaller steam line and a larger steam line, or between a small steam line and an interurban railroad and a steam railroad, the difference being, the larger the steam line the sharper the contrast. I think they are two separate and distinct transportation units. I think there is as much difference, Mr. Examiner, between an interurban railroad and a steam railroad, which possibly is doing the same thing, possibly, to some extent, the same general result, as there is between a steam railroad and a truck line, which is likewise doing the same general thing but doing it in an entirely different manner. I think that you might say that there are three general classes of transportation agencies—the truck lines, the interurban railroads, and the steam railroads. You might add a fourth class to those steam railroads, like service to the logging interests, or plant facilities, that are distinctively single industry units. I think they are on an entirely different basis from any of the other three. (Tr. 66-67)

Exhibit No. 12 received in evidence, without objection.
640 (See Court Exhibit No. 13) Exhibit No. 12 is a detail of the grade breaks on the main line of the Utah Idaho Central, showing the mileage, location, the elevation, the length of the grade and the degree of ascent or descent. A typical characteristic of an electric interurban railroad, as contradistinguished from even small steam railroads, is that large sums are not spent to eliminate grade breaks; and a characteristic of those lines is many breaks in short distances. That, as will be shown in the next exhibit, is a very definite limiting factor on the operation, and suggests what you might say exists on an operation purely of the type performed by an interurban road.

st to briefly go over this, you will notice between—well, in
first grade, say the first ten miles of the railroad, there are
elve grade breaks, both as to descent and ascent. In other
rds, in laying out an interurban railroad you make no
ort to put in heavy fills or heavy excavations. You follow
nerally, within reasonable limits, the contour of the country.
the next ten miles of the railroad there are eight grade
eaks, both ascending and descending; and going right on
rough the exhibit, your picture is generally the same. This
hibit will be more sharply brought to your attention in the
xt one, which is the condensed profile of the road, and is in-
oduced largely to support the profile. (Tr. 67-68)

(In reply to Mr. MacKenzie) That 4.77 grade about the
iddle of page 2 runs right in the center of the main business
ction of the City of Logan. The grade is so heavy because it
necessary to conform with the construction on the main
reet of the municipality. The railroad has to conform to
e city grade. (Tr. 68-69)

Exhibit No. 13 received in evidence, without objection.
1 (See Court Exhibit No. 14). This exhibit is a con-
densed profile of the Utah-Idaho Central Railroad, and
posed on that profile is the locomotive tonnage curve, both
e factory rating and actual. The purpose of this exhibit in
dition to showing the profile and the frequent and sharp
eaks in the profile of the railroad, is to show the practical
fect of that type of construction, which is peculiar to elec-
ical interurban railroads, on their ability to move tonnage.
is is an eight-sheet exhibit carrying the mileage progressively
each sheet, from Ogden north. The first sheet shows the
st 10 miles, with grade breaks from a minus of 93 to a plus
1 percent, with twelve pronounced breaks in that 10 miles
road. This shows a technical factory rating from 11 to 22
rs, and a practical rating, north-bound, of 12 cars. South-
und it shows a practical rating of 14 cars. On the extreme
ght-hand side of the exhibit it shows the tonnage that those
rs represent, 45 tons being taken as the average weight of
ch car. The second sheet shows from Mile Post 10 to 22,
d shows north-bound a practical rating of 12 to 14 cars;
uth-bound a practical rating likewise from 12 to 14 cars. The
ade breaks in these 12 miles run from a minus of 2 degrees to
plus of 1.90, the minus and plus being figured on the north-

high bound operation. Sheet No. 3 of this exhibit goes from Mile Post 22 to 34. In these 12 miles there are only 4 substantial grade breaks. The practical rating runs, north bound, from 22 cars down to 17, and south-bound from 22 cars to 6.
642 The reason for the sharp difference south-bound is on account of the extreme curvature against them. The third sheet is 34 to 46. That is starting over the Collinston Divide. It shows a minimum grade of .58 plus and a maximum of 2 degrees plus to the summit, which starts down on 2 per cent descending. The practical rating north-bound on this sheet is 12 cars up to Mile Post 36 plus, which is Dewey, and 5 cars beyond. South bound the practical rating is 12 cars. The limitation on that rating is the ability to hold the train under control down-hill with the type of motive power available. Sheet 5 is from Mile Post 46 to 58. It shows the descending grade minus 2 percent down to the bottom of the hill, with 12 pronounced grade breaks from a minus 1.1 to a plus 2 degrees, in a distance of slightly less than 8 miles, with a car limitation as low as 12 cars north-bound and 8 cars south-bound. Sheet No. 6, from Mile Post 58 to 70, which shows grade fluctuations from a minus of 1.4 percent to a plus of two percent, with 10 pronounced grade breaks which affect traffic in those 12 miles. Sheet No. 7 is Mile Post 70 to 82, and grade fluctuations from a minus of 2 percent to a plus of 1.80, with 12 pronounced grade breaks in those 12 miles. Sheet No. 8 is from 82 to 94, and grade fluctuations from a minus of 2 percent to a plus of 2 percent, and 10 pronounced grade breaks in those 12 miles. Sheet No. 6, to correct my previous statement, goes from a minus of 1.98 percent to a maximum of 4.77 percent plus. This exhibit generally indicates the broken grade line on the railroad, and its restrictive effect on the size and tonnage of trains which may be hauled. (Tr. 69-72)

Exhibit No. 14 received in evidence, without objection.
643 (See Court Exhibit No. 15). This exhibit is a statement of the number of passenger trains, passenger buses, and freight trains operated over the Utah-Idaho Central Railroad for the years 1932, 1933 and 1934, and the average number of trains, buses and freight trains operated daily. The purpose of this exhibit is to show the frequency of service, characteristic interurban railroad service. It shows, in substance, that during the year 1932 this Company operated an average

daily number of passenger trains of 9.7, an average daily number of buses of 4.1, and an average daily number of freight trains of 6.6; the freight trains running from a minimum of 3.6 to a maximum of 11.3; the passenger trains from a minimum of 7.8 to a maximum of 10.8. During the year 1933 a daily average passenger trains was operated to the number of 11; passenger buses to an average of 5.6 and freight trains to an average of 9.1, with minimum freight trains of 5.7 and maximum of 14.2. During the year 1934 the average daily passenger trains was 11.5, passenger buses 4.1 and freight trains 7.7 with a minimum of freight trains 4.4, and a maximum of 14.7. (Tr. 73-74)

Exhibit No. 15 received in evidence, without objection. (See Court Exhibit No. 16). This exhibit is a statement or list of the passenger stations on the Utah-Idaho Central Railroad, showing the mileage of each station from Ogden, the mileage as between the stations, and the population of the cities and towns on the line. This statement shows that in a total mileage of 107 miles there are 73 passenger stops, or an average of approximately a stop every mile and a half. In the third column of the exhibit it shows the distance between the preceding stops. You will note from that column that the Maximum distance between any two passenger stops is 3 miles, and there
644 are only 5 instances where that maximum distance is involved; the balance of the distance between stops being from one-half mile to a mileage of a mile and a half and two miles. This is distinctly an interurban characteristic, and represents a type of passenger service just, as you might say, grown-up from street car service. This a type of passenger service designed to make stops frequent enough to take care of every small settlement of houses. On the last column of this exhibit it shows the population of the cities and towns served. There is no effort in this exhibit to show the rural population. It shows the population of Ogden 40,272 people; Willard 561; Brigham 5093; Honeyville 494; Dewey 275; Mendon 434; Wellesville 1571; Hyrum 1869; Millville 403; Providence 1088; Logan 9979; Hyde Park 723; Smithfield 2353; Richmond 1140; Lewiston 1783; Preston 3381; Plain City 806; Warren 203. In addition to those populations, of course, there is the rural population that is tributary to these various passenger stops, which is not available from any census. (Tr. 74-75)

(In reply to Mr. MacKenzie) The letter "F" opposite the stations named indicates flag stops. At a good many of these stops there are sidings of spurs or buildings, and at a good many of them there are not. A good many of these places are school stops and main-line stops at road crossings, designed to furnish interurban service to the small community of families; the theory of the flag stops on the interurban being quite similar to the stops on street-car lines: If the passenger is at the corner the street-car stops; if not, it goes on. (Tr. 76)

Exhibit No. 16 received in evidence without objection (See Court Exhibit No. 17). This exhibit is a statement of the passengers handled by the Utah-Idaho Central Railroad,
645 the amount of passenger fare, and the average fare per passenger, for the years 1931, 1932, 1933 and 1934. It shows that in the year 1931 a total of 489,650 passengers were handled, for a total fare of $89,632. In 1932 a total of 407,507 passengers were handled for a total fare of $67,410, or an average fare of 25.2 cents. In 1933 a total of 366,442 passengers were handled, for a total of $61,429, an average of 23.4 cents. In 1934 a total of 408,634 passengers were handled, for a total fare of $61,346, or an average of 20 7 cents per fare. This statement illustrates that the average fare per passenger during this four-year period was from 20.7 cents to 29.6; again illustrating the interurban characteristic of the property, that of short haul passenger traffic at a low average fare per passenger. (Tr. 77-78)

(In reply to Mr. MacKenzie) The statement does not include any revenue received from the Ogden Rapid Transit Company. The Company does not participate in inter-line passenger service with steam railroads. We do not sell tickets on our line on interchanges with the steam railroad. We handle United States mail and also express shipments. They are handled on our passenger trains. (Tr. 78)

Exhibit No. 17 received in evidence, without objection. (See Court Exhibit No. 18.) This exhibit is a statement of passengers handled by the Utah-Idaho Central as between regular passengers and school students, for the years 1931, '32, '33 and '34. In a previous exhibit I have explained to the Commission the type of school service provided by this Company in the transportation of students from their homes to centrally located high schools. This exhibit shows that in the year 1931,

out of total passengers handled 489,650, 210,490 were school students handled in the manner previously explained. In 1932 out of a total of 407,507 passengers, 185,154 were school
646 students. In 1933, out of a total of 366,442 passengers, 174,379 were school students. In the year 1934, out of a total of 408,634 passengers, 175,599 were school students. (Tr. 79)

Exhibit No. 18 received in evidence, without objection. (See Court Exhibit No. 19.) In the previous series of exhibits we have brought out the various physical and operating characteristics on the Utah-Idaho Central Railroad that are unique to an interurban electric line. Now we propose, in a series of exhibits, to compare the conditions and results as with steam railroads, or part of the general steam system of transportation. Exhibit No. 18 is a statement showing the capacity of sidings, based on a 50 foot per car, on the various steam railroads operating out of Utah, for the first 200 miles from their Utah terminal; this information being obtained from their official timetables. In the similiar exhibit previously introduced with reference to the Utah-Idaho Central Railroad it showed an average length of sidings of 16 cars. This exhibit shows that the Los Angeles and Salt Lake Railroad, on the first 200 miles from the Utah terminal, has a total length of 87 cars, or about five and a half times the average on the Utah-Idaho Central Railroad. The Southern Pacific Railroad has an average length of 114 cars, or about nine times the length on the Utah-Idaho Central Railroad. The Oregon Short Line has an average length of 86 cars, or about five and a half times the length on the Utah Idaho Central Railroad. The Union Pacific has an average length of 109 cars, or about seven times the Utah-Idaho Central Railroad. The Denver & Rio Grande has an average length of 86 cars, or approximately five and a half times the average length on the Utah-Idaho Central Railroad. (Tr. 80-81)

Exhibit No. 19 received in evidence, without objection.
647 (See Court Exhibit No. 20). This exhibit gives selected operating statistics of the steam railroads in Utah connecting with the Utah-Idaho Central Railroad, and also that same information for the Utah-Idaho Central. This statement is designed to show the relative size of trains, and also the relative labor costs per car-mile for enginemen and trainmen. The general purpose of this exhibit is to more clearly illustrate

the fact that all of the limiting physical characteristics that have been shown in the previous exhibits, and which are unique and distinctive to an interurban railroad, are definitely reflected in their operation, as compared with the operation of the general steam railroads. They are limited to the point that they restrict the number of cars per train, and consequently put a higher labor cost per car-mile on an interurban railroad by reason of its physical limitations, than is true on steam railroads. (Tr. 81-82)

The first page of Exhibit No. 19 shows that for the years 1931 to 1934 the Union Pacific Railroad had an average of freight cars per train-mile, or in other words, an average length of freight train of 62.9 cars to 65.4 cars. That figure can be mentally contrasted with our substation ability to handle tonnage, with our locomotive ability to handle tonnage, with our side-track capacity, and with our physical road-bed type of construction. This exhibit likewise shows that the cost to the Union Pacific per car-mile per engine-man and train-man service in those four years ranged from a low of .56 cents per car-mile to a high of .64 cents. To more clearly develop the picture I am turning to the last page of the exhibit,
648 which shows the same information with reference to the Utah-Idaho Central Railroad, and shows that the average length per train, during the four-year period, on the Utah-Idaho Central Railroad, per freight train, was from 5.6 cars to 6.3 cars, as compared with the Union Pacific 62.9 to 65.4 cars, or possibly ten times greater length. It shows that the average cost per car-mile for engine-men and train-men on the service on the Utah-Idaho Central Railroad ranges, in the four years, from 2.59 cents to 3.1 cents, as compared with the Union Pacific, .56 of 1 cent to .64 of a cent. In the second half of the Union Pacific statistical review it shows the average length of their passenger trains, ranging from 9.4 cars per train to 10.8, while the average length on the Utah-Idaho Central Railroad ranges from 1.1 cars to 1.3 cars. The average cost per car-mile of engine-men and train-men service on the Union Pacific ranges from 2.65 to 3.14 cents, as compared with the Utah-Idaho Central 4.24 cents to 5.1 cents. On the Oregon Short Line the average length of trains ranges from 46.7 cars to 50.8 cars, as compared again with the Utah-Idaho Central of 5 to 6 cars. The cost on the Oregon Short Line was from .92 of a cent to .98 of a cent, as compared again with the Utah-

Idaho Central 2-½ cents to 3.1 cents. In passenger service the Oregon Short Line ranges from 7.1 cars to 7.7, as compared with 1.1 on the Utah-Idaho Central. Their passenger cost per car-mile for engine-men and train-men service was 3.7 to 3.98, as compared with the Utah-Idaho Central 4.2 to 5.1. The Los Angeles route, the average length of freight trains was 44 to 47 cars, as compared with the Utah-Idaho Central 5 to 6 cars.

Their average cost for engine-men and train-men was
649 1.1 to 1.2, as compared again with our 2.59 to 3.1. Their passenger train lengths were 9.8 to 11 cars, as compared with our 1.1 to 1.3 cars. Their labor cost was 2.83 to 3.27, as compared with our 4.24 to 5.1 cents. The Southern Pacific, another steam line connection, has an average train length, during those years, from 52.5 to 56.1, as compared with our 5 and 6 cars. The Southern Pacific had a cost of 1 cent to 1.15, as compared with the Utah-Idaho Central 2.59 to 3.1. Their passenger average length was 9.4 to 10, compared with the Utah-Idaho Central 1.1 to 1.3. Their passenger labor costs, 3.14 to 3.53, compared with our 4.24 to 5.1. On the Denver & Rio Grande, the last of our steam road connections, the average length of train was from 45.1 to 48.6 cars, again compared with our 5 to 6 cars. Their costs were 1.03 cents to 1.17, again compared with our 2.59 to 3.1 cents. The passenger trains, their average 6.2 to 7 cars, compared with our 1.1 to 1.2. Their passenger train-men's costs, 3.72 to 4.09, compared with our 4.24 to 5.1. This statement clearly shows the entirely different operating characteristics of these two classes of transportation units. The exhibit further shows that limitations of the operating conditions on an interurban electric railroad are such that in freight operations alone the labor costs per car-mile on an interurban railroad is from 3 to 4 times greater than that on a steam railroad. (Tr. 82-85)

Replying to a question by the examiner as to whether any similar comparison had been made of the Utah-Idaho Central with steam railroads of comparable length, the witness said: I know of no steam railroads in this section of the country of comparable lengths. The short line development in our section is through electric operation. There are, however, the
650 many limiting characteristics of an interurban railroad that in my judgment would produce the same different comparisons, possibly to not the extent as shown here, between a short steam railroad and an interurban electric

railroad. Short steam railroads are not operated in an interurban manner. They have not got every feature of their general construction joining together to limit their type of operation and their carrying capacity. (Tr. 85-86)

A short steam line railroad is limited only by its track conditions and size of its power units. It does not make any difference what the power units are, on an interurban railway, on such an operation as the Utah-Idaho Central Railroad, independent of both the track conditions and the power units, there is an absolute limitation upon its capacity and operations. (Tr. 86).

(In reply to Mr. MacKenzie) Every exhibit which we have introduced has shown a coordinated construction program with a definite, clear view of accommodating interurban construction. In other words, I have shown you that starting at the foundation, you might say, the sub-station capacity on this railroad is no greater than the locomotive capacity, and if you endeavor to increase your locomotive capacity you will have to increase your sub-station capacity. I have shown you that the type of track construction is absolutely in harmony with the sub-station capacity and the locomotive capacity; that the length of sidings is absolutely in harmony with the capacity of the three units, the sub-station, the locomotive, and the track. I have shown you that in our method of operation and in the results of our operation we have operated up to that maximum interurban capacity. Now, you could take a short steam railroad and assume—yes, I think it is a fair assumption that it was not built to furnish a frequent short-haul interurban
651 service. It is not a graduated *stream*-line and all you need to do is to change the weight and type of your equipment. If some of your curves are a little sharp, you might have to flatten those. On an interurban railroad, or on the Utah-Idaho Central, as a typical interurban road, if we endeavor to change our type of transportation into the method used by steam railroads, used by the general railroad system, we would have to completely rebuild and replace first our source of power, our sub-stations; second, our grades; third, our curvatures; fourth, our weight of rail; fifth, buy new motive power; sixth, make our stations and sidings more accessible, change our standard No. 4 frogs, we will say, to No. 7; flatten all the curves in our communities; and we would have to move off such situa-

tions as we have in the paved street for two miles, approximately, on the paved street of Logan. We run right in the middle of the business section, and go over a 4.7 grade. We would just have to move off that street, and go out and buy a private right-of-way, or go on the outskirts of town. (Tr. 86-88)

Just one more word: The Examiner's question brings this to my mind. That is not a characteristic of steam roads, from what I know of steam roads. They do not operate on public streets. They are usually constructed to some specific industry. They are constructed in the nature of tap lines or belt lines. They are not constructed for an interurban, and do not have the general characteristics of an interurban, and are more flexible as to developing into a larger steam line. If we put heavier loads on, the first thing we will have to do is to change the weight of our rails, flatten our curves, put on tieplates, heavier ties with close plates, and in general reconstruct our railroad. We could construct it into a steam railroad if we rebuilt it entirely, or bought new equipment. (Tr. 88-89)

(In reply to Mr. MacKenzie) I think some of those old obsolete locomotives, that were used many years ago, could operate on all of our main line, except for the fact that they would be barred by our legal prohibitions contained in our franchises, and except for the further fact that I don't know whether there are any of those small locomotives still in existence. (Tr. 89)

If we went into steam-railroad operation, we would have to entirely rebuild the line. (Tr. 89)

Mr. MacKenzie: Then again I want to call attention to the fact that on a number of steam railroads they do operate through large cities, on city streets, by virtue of franchises granted by the municipalities; and more particularly I call attention to the Southern Pacific, operated for a considerable distance over Alameda Avenue in Los Angeles.

Mr. DeVine: That is true of California.

Judge Howell: But that is not the main street.

Mr. MacKenzie: Alameda Avenue is not a main street?

Mr. DeVine: It was turned over to the railroad..

The Witness: Our operation on the main street in Logan would be similar to an operation on Spring Street in Los Angeles, the relative comparison to the size of the city.

(By Mr. MacKenzie) May I ask, in connection with this, if the Denver & Rio Grande operates over any of these streets in Ogden or Salt Lake City?

653 Mr. DeVine: They cross over streets and they operate along certain streets that are now a part of the platted lay-out, but were platted and laid out after the railroad was in there.

Mr. MacKenzie: That is in Salt Lake City or Ogden?

Mr. Devine: In both places.

The Witness: And they are far removed from the residential district.

Mr. DeVine: There is no question about that at all; and in addition to that you will find spur tracks in Salt Lake City, and I am not sure but what in Ogden, on some public streets to serve industries.

In that connection I want to bring another statement here for the record, because I think the witness will testify to it. If he says it is not correct, it may be stricken from the record. Both the Southern Pacific and the Union Pacific are land grant railroads. The towns were built around those railroads. That was not quite true of Salt Lake City, although the old Utah Central Railroad—I think that was the name of it—was substantially the same thing." (Tr. 90-91)

Exhibit No. 20 received in evidence without objection. (See Court Exhibit No. 21).. Exhibit No. 20 has in mind the fact that there is such a thing as an electrified steam railroad. There is today, and has been for many years, in fact, back to and before the time that Congress began to exempt interurban railroads. This exhibit is comparative to No. 19, and the purpose is to show that an electrified steam railroad carries all of the characteristics of a steam railroad, with some additional efficiency by reason of the *elctrification,* and none of the pro-

hibitions and burdens of a purely interurban railroad, as such interurban railroad is physically constructed. These are the statistics that were available from the Chicago-Milwau-
654 kee St. Paul and Pacific, comparing their steam operation and their electrified operation. In considering this exhibit it is again suggested that the averages of the purely interurban Utah-Idaho Central be born in mind. In the years 1929 to 1938, excluding the year 1930, which was not available on the steam operation of the Chicago, Milwaukee & St. Paul, the average length per freight train was 40.3 cars per train to 45.8 cars. The average length on their electric operation was 50.8 cars to 72.6; again compared with the Utah-Idaho Central average of 5 to 6 cars per train. This comparison brings out that there are definitely electrified steam railroads, steam railroads and interurban railroads, and the result of their operation clearly classifies them. For the only years available, the engine-men's cost per car-mile on freight, on the Milwaukee steam, was 1.16; electric 1.01; as compared with 2.54 to 3.1 cents on the Utah-Idaho Central. In other words, the train and engine-men's labor cost on the Milwaukee electrified steam railroad was lower than on their steam railroad proper, and either one of them was only about one-third the car-mile cost on the interurban road. Going to passenger operations you have the same general picture. Their average length per passenger train, on their steam operation, 5.8 to 6; on their electric operation 8.6 to 10.9, and on ours 1.1 to 1.3. Their labor costs on their steam, per car-mile, passenger, 4.82; 3.08 electrified; against ours 4.24 to 5.1. (Tr. 91-93).

Exhibit No. 21 received in evidence without objection (see Court Exhibit No. 22). This exhibit is a graphic picture of the comparative freight-car miles per train-mile, or average
655 cars per train, or length per train, as reflected in the preceding exhibits. It also shows the comparative length between the Milwaukee electrified and the Milwaukee steam operation. On this graph I might direct your attention to the very small red column on the extreme right of each year, which represents the average length per freight train on the Utah-Idaho Central with the varying lengths from 45 to 73 cars in the larger columns representing the average length on the steam railroads and on the electrified railroad of the Chicago-Milwaukee. (Tr. 93-94)

(In reply to Mr. MacKenzie) The difference in the number of cars handled per train by our line compared with the others was not a result of the differences in the volume of traffic passing over them. It is the result purely of the difference in physical construction, which causes the limitation in size of train, as brought out in the condensed profile in the exhibit showing the capacity of power, in the exhibit showing the capacity of sub-station, and also a contributing factor is the typical interurban type of service, which calls for fast and frequent service of small trains. The size of our trains in this entire period is not limited to any material extent by the question of volume of business. If we had additional traffic on our railroad today, we would buy more locomotives of the same size. We would possibly install additional sub-stations with the same limited power factor; and instead of averaging ten freight trains a day, as is shown in a previous exhibit, or practically one every two hours, we might average twenty freight trains a day, or one every hour. The other alternative would be to build a new railroad, or build a steam railroad. But my judgment is that with the development in volume we would follow the alternative I have outlined. It would
656 be economically sound, because if we build another type of railroad we would lose our peculiar usefulness and value to the industries and the people in the valley, and possibly then lose some of our support. Just as it had happened on steam lines where they haven't interurban lines, that being the purpose, to hold the business to the railroads. (T. 94-96).

Exhibit No. 22 received in evidence without objection (see Court Exhibit No. 23). This exhibit is likewise a graphic picture of the statistics shown on previous exhibits, showing the average length per passenger train on the Utah-Idaho Central Railroad, as compared with the various steam roads and the Milwaukee steam and electrified operation; likewise the very small column in the extreme right of each, which is the length of the Utah-Idaho Central trains alone, from 1 to 1.2 cars per train, as compared with the larger columns representing the steam roads, the largest of which is the electrified section of the Milwaukee in 1933, which averages almost 11 cars per train. (Tr. 95-96)

Exhibit No. 23 received in evidence without objection (see Court Exhibit No. 24). This exhibit is a graphic picture of

the comparative cost of engine-men and train-men service per car-mile in freight operation, the Utah-Idaho Central Railroad, as compared with the other steam railroads, and showing for the year 1929 the same relative figure for the steam and the electrified operation of the Milwaukee. It is interesting, on this exhibit, to note that where in the average length of trains in exhibit 21 the Utah-Idaho Central column was a very small column, on the extreme right, when it comes to the cost per car-mile the Utah-Idaho Central is the largest column, on the extreme right, showing a length of from two and a half to three
657 times that of the steam railroads, or of the Milwaukee electrified section, indicating that by reason of the peculiar conditions on an interurban railroad their unit labor costs per car-mile for engine and train service are substantially greater than the steam road. To my mind, that, in itself, indicates an entirely different condition, an entirely different condition of employment, and entirely different type of service, and by no reasonable method could you apply the same type of labor regulations on an interurban railroad as is applied to a steam railroad. (Tr. 96-98)

Exhibit No. 24 received in evidence without objection (see Court Exhibit No. 25). This exhibit is the graphic picture of the comparative cost of engine-men and train-men service, per car-mile, in passenger service—the Utah-Idaho Central as compared with the steam railroads, and in every instance it shows a higher cost per car mile for passenger train and engine men's service than shown on the steam railroads, and a very substantially higher cost than on the electrified portion of the Chicago-Milwaukee & St. Paul. (Tr. 98).

(In reply to Mr. MacKenzie) I have not prepared any exhibit showing the comparative costs on the steam roads and our property for the operation of branch lines. Our costs include our branch-line operation and I assume their costs include theirs. If we compare the branch line operation of the steam railroad we should compare the branch-line operation of our railroad. We will have the same relative disparity between size of trains and operating costs on our branch lines as compared with our main line, as a steam road would have between their main line and their branch lines. I might go further and
658 say that from personal knowledge the length of trains is considerably larger on the branch lines of the steam railroads in Utah than on the main line of our railroad.

Their branch lines have not the physical restrictive conditions that our main line has, obviously, because they were built for steam operation, and we were built as an interurban, and still are. The Oregon Short Line operates, to my knowledge, some one-car units for passenger service on branch lines; also to my personal knowledge they operate 35 and 40 and maybe larger freight-car units on those branch lines, in freight operations. I might state that their one-car unit in their passenger operation was dictated by decreasing traffic. The small unit in our passenger operation was dictated by all of the limiting factors; available power, type of construction, type of equipment, and those physical limiting factors that caused our property to be a one and two-car operation property, when business was substantially better than it is today, and at that time the Oregon Short Line were operating large passenger units on their branch lines. So their one-car unit in passenger service is a matter of meeting the falling business, and ours is now and always has been limited by physical construction. (Tr. 98-100).

As a matter of fact the Oregon Short Line and the Union Pacific System generally, where they have put the one-car unit in, went in and asked permission to do it, upon the sole ground of falling business. And they got permission from this Commission to do so, as well as permission from the State Commission. (Tr. 100).

Exhibit No. 25 marked for identification. The Utah-Idaho Central Railroad Company, under its then name—The Utah-Idaho Central Railroad Company then—was in existence in 1918, at the time of Federal control of railways. As my recollection goes, the original proclamation of the President
659 or the Director-General left some question as to the type of railroads that should be under Federal control. However, from the time of the original proclamation, the Utah-Idaho Central Railroad received no orders, directions, benefits or instructions from the Director-General of Railroads; and subsequently, some very few months after the original taking over, or the original proclamation, we were definitely notified by the Director-General of Railroads that the Utah-Idaho Central was not under Federal control, and continuing to the termination of Federal control we never were under Federal control, or never received any instructions, restrictions, or received any of the benefits of Federal control. (Tr. 100-101)

(In reply to Mr. MacKenzie) I don't understand that the general classification of the railroads that were not taken under Federal control were the so-called short lines. My opinion of the reason that the Utah-Idaho Central was excluded is because it was essentially an interurban railroad and was not a part of the general steam railroad system of transportation, the preservation of which the Government felt to be necessary in order to advance its military activities. (Tr. 102)

It is my recollection that when an application was made, or inquiry was officially made by the company, that I was so instructed. I have not been able to locate the original order. I did endeavor to get a copy of that order from Washington. I did obtain from the files there a photostatic copy of the order. And the original, so far as I know, or the part that came to the Company at that time, has been either lost or destroyed a long time past. Exhibit No. 25, which is a photostatic copy of the order as it appears in the files, received in evidence without objection (see Court Exhibit No. 26).

Exhibit No. 26 received in evidence without objection, and a copy thereof is hereto attached. Exhibit No. 26 is a statement of the revenues on the Utah-Idaho Central Rail-
660 road for a nineteen-year period—from 1916 to 1934. As has been previously testified, construction on the Utah-Idaho Central Railroad, and the completion of the almagamation of the constituent interurban lines, was completed along about in the latter part of 1915. 1916 was the first partial operating year, and 1917 it could be considered that the property really got into full operation. This exhibit shows a segregation of this revenue as between the various classes of revenue prescribed by the Interstate Commerce Commission, namely, passenger revenue, package revenue, mail and express revenue, milk revenue, freight revenue, switching revenue, miscellaneous revenue, and revenue from other railway operations. This exhibit, in addition to giving the earnings for the various classes of business, definitely shows that there has been no change in the character of the operations or the purpose of this property, from the time it was originally amalgamated out of the street-car lines and small interurban lines. The outstanding characteristic of this exhibit, of course, is the very sharp decline in passenger revenue. The passenger revenue, as you will note, started in 1916 from a peak of 246,000, and in 1920

reached a peak of 448,000, and then declined over the period to 1934 to 61,346. The reaching of that peak, and the subsequent decline, is in no way due to any different character of railway, or different character of operation, but due entirely to the well-known element of the increase in the number of privately-owned automobiles and the construction of wide, well paved highways, that furnish a more convenient method of transportation than either interurban lines or steam lines. Automobile travel between Ogden and Logan in the Cache Valley, on account of the highways, was extremely unpleasant up to about 1922 or '23, when the Sardine Pass was constructed. It was not only unpleasant but decidedly hazardous. Since that time the Sardine Pass has been constructed. That has provided a paved highway twenty miles shorter than our railroad, and it is that, and the increase of the privately-owned automobiles, that has affected our passenger revenue, and not any change in our original characteristic of an interurban property. Now, the same general curve shows in the other classes of revenue, but they are of minor quantities, minor amounts, until we get to freight revenue. It is interesting to note that the freight revenue of this Company followed, to a large extent, the same general characteristic. (Tr. 104-106)

661

In 1916, the first year of its operation, and the year that it did not get into a full swing, by reason of the completion of construction, its freight revenue was $173,000. In 1917, the first real year of freight revenue, it was $255,000. That likewise went to a peak in freight revenue, in 1920, of 506,000, fluctuating back and forth with economic conditions, crop conditions, and various other outside influences; but not at all limited or controlled or extended by any different than the original interurban type of operation; that they ended up in the year 1934 with $378,000 freight revenue, as compared with the peak, in 1920, of $506,000. Our passenger revenue has declined to a greater extent and more constantly by reason of competitive automobile conditions, and our freight revenue has responded to economic growth and market conditions; but this chart of revenue clearly shows that there has been no important change in our type of operation; that we are the same interurban line that we were when we were rejected from Federal control; that we are the same interurban line that we were when we were built

out of our constituent units. It is also true that the
662 purely local character of our freight originating over the territory we have, being agricultural in character, it includes fruit, and that we have not a constant year-by-year crop. Our fruit crops are subject to weather conditions. Our general territory is subject to water conditions. At this time we have no extensive water storage, and our crop depends entirely upon the amount of precipitation stored in the watersheds during the winter; and the third element that effects it is the market. (Tr. 106-107)

(In reply to Mr. MacKenzie) After Mr. MacKenzie had pointed out that in 1916 the passenger revenue was $246,171.72 and the freight revenue was $173,982.46, or a difference of approximately $72,000 more passenger revenue than freight revenue; while in 1934 the passenger revenue was $61,346.25 and the freight revenue was $378,934, or about six time more than the passenger revenue, the witness testified: That is correct. As I explained, in 1916 was the first year of the operation under construction. As I explained in my opening statement, the purpose of the construction and amalgamation of this interurban railroad, which was built by the people who built the processing plants and agricultural manufacturing plants in the valley, was to give this section of northern Utah the benefit of the intensive development that interurban service would do; so naturally we would expect that from the time of the construction of this interurban line, and the imposition on the territory involved of the benefits of interurban service, that there would be a development in the territory, and that development would likewise be reflected in the revenues of the Company. Now, were it possible to wipe out all the area that served the good roads, and the passenger automobiles, and rep-
resent the personal travel of the people, peculiar to
663 the conditions that were necessary in this time you talk of, unquestionably we would have a situation where the passenger revenue would be a substantially greater percent of the gross than the freight revenue. In other words, the shrink in the passenger revenue has been due entirely to a condition that the method of operating this property had nothing to do with. The growth and fluctuation in the freight revenue,—what growth is there has been due to the benefit of an interurban

service and the intensive development it promoted. The fluctuation has been due to economic conditions, crops, markets, water, and so forth; and clearly there is nothing in the exhibit that does not tend to show that there has been no conversion or change in the type of operation of this railroad from the day it was built. It was an interurban railroad when it was built. It was an interurban railroad when it was rejected from Federal control, and the very curve shows it is still an interurban railroad, and still operated with the same interurban characteristics. During the year 1933 a total of 6,494 carloads of freight originated on the Utah-Idaho Central. Of that total, 3394 were delivered to steam-line connections; 103 to interurban electric line connections; and 2997 were local, that is originated and moved locally on our line. During the year 1934, out of a total of 5554 carloads originated, 2814 were delivered to steam-line connections, 143 to interurban electric line connections, and 2,597 cars local. The freight that was delivered to the steam-line connections was not all interstate traffic. A substantial portion of it might have been intrastate traffic. I might explain
664 that the function of an interurban railroad in an agricultural community is quite similar to the function of a truck line, to pick up the raw product, take it to the processing plant for processing into the final marketable product, then we perform the next service of a gathering line or a tap line, a distinctly interurban service. We take the equipment of the steam line and we load it with the condensed milk, the manufactured sugar, or what not, and deliver it to the connection; our hauls sometimes being as small as eight or ten miles. The same thing is true of fruits and vegetables. Our frequent loading points and our type of service are advantageous for the producer of fruit and vegetables, to bring their commodities down to our rails, assemble them, or perform the feeding service to the transcontinental line for the long haul. (Tr. 108-111)

At the request of Mr. MacKenzie, the witness and counsel for the carrier agreed to furnish for the record a statement showing the number of carloads of freight originating on the property for the last six months of the year 1934, and showing destination by state and commodity; and also showing the cities in which these carload shipments originated that were delivered to the line during the last six months of the year 1934. The examiner gave permission to file such statement within 15 days, and it

was so filed and received in evidence as Exhibit No. 28 and a copy thereof is hereto attached. (Tr. 111-113)

(In reply to Mr. MacKenzie) We interchange l.c.l. shipments with connecting lines. (Tr. 113)

Exhibit No. 27 received in evidence without objection
665 (See Court Exhibit No. 27). This exhibit is an chronological history of existing labor agreements between the Utah Idaho Central Railroad Company, including its predecessor companies, and various crafts of employes. This exhibit shows that at the present time the Company has an operative existing labor agreement with Division 418 of the Amalgamated Association of Street Electric Railway Employes and Coach Operators of America. This association is an affiliation of the American Federation of Labor, and this agreement covers the wages and working conditions of all train men, shop men, barn men, and substation operators, and has been in existence continuously, except as amended or renewed, from May 25th, 1909, to date, and is still in effect. This labor agreement has never been beyond the stage of friendly negotiations for renewal or amendment. There has never been a strike under it, or a threatened strike, or request for arbitration. This Company also has with its station employes an agreement effective since May 1, 1934, and still in effect, that covers all employes in station service, and likewise has never been beyond the stage of friendly negotiation. (Tr. 113-114)

(In reply to Mr. MacKenzie) I am not familiar, particularly, with the Railway Labor Act, but the only thing I understand about it is some *year* ago a representative of your client formally advised us that by reason of the fact that we were under the Railway Labor Act, it would be necessary for us to enter into a labor agreement with the Brotherhood of Railway Trainmen, notwithstanding the fact that we had a valid labor agreement with an affiliate of the American Federation of
Labor. I haven't any further particular knowledge of
666 the Railway Labor Act, or what its provisions or directions might be.

"Mr. MacKenzie: * * * I don't know whether Exhibit No. 27 was accepted or not. It seems to me there is a question or whether or not that exhibit ought to be made a part of the hearing.

Exam. Steer: That was received without objection. I t
I will permit it to remain in the record for whatever it ma
worth.

Mr. Devine: So that there may be no oversight—this
been a rather long session and a lot of exhibits, as a ge
proposition, merely to correct any omission, if there is an
may be understood, I take it, that all of the Exhibits fro
to 27, which will include Exhibit 28 when furnished, wil
offered as a part of the record in this case?

Exam. Steer: Received.

Mr. DeVine: And received as a part of the record.

Exam. Steer: Yes." (Tr. 115-116)

(In reply to Mr. MacKenzie) This company particip
in through freight rates and through freight tariffs cove
the through movement of freight. It has no through passe
rates or through passenger tariffs with any railroad except
local intrastate interurbans in Utah. The tariffs cover p
tically all of the through rates named into the territory in w
we operate. The Company has filed individual tariffs u
the I.C.C. serial numbers. I think we possibly have thre
four that are in effect all the time. They have been reissued
supplemented. The Company is a participating carrie
tariffs and classifications issued by other lines or agents.
participate in the official classification. We particip
667 in all agency publications that affect the territory w
we serve, restricting these answers, however, purel
freight. The Company has additional powers of attorne
concurrences with tariff-publishing agents. They have
filed with the Interstate Commerce Commission, or the S
Railroad Commission. We participate in the divisions of t
bureaus. I doubt whether we hold membership in the bur
or not. I think generally small interurbans are not admi
to membership, but they are permitted to participate. We h
no off-line solicitors. We maintain solicitors, or I might
a solicitor in our own territory, but we have no out-of-st
off-line solicitors. We have no joint soliciting arrangeme
We expect to solicit our own traffic and find that is our bur
We observe the Hours of Service Law in train operation
the safety-appliance laws. There are no outside railroad

iers that have an interest in the property, either directly or indirectly, through any ownership or otherwise. At Ogden we have an interchange with the Bamberger Electric, an intrastate interurban. At Ogden we have also an interchange with the Denver & Rio Grande and the Union Pacific System and the Southern Pacific System. The Union Pacific System takes in their several units. At Brigham City we have an interchange, for switching only, with the Union Pacific. By "switching only" I mean in order to permit them to put loads to us for spotting at an industry that might be on our line, or vice versa. At Dewey we have an interchange with the Union Pacific System for the general handling of through business. At Hyrum we have an interchange with the Union Pacific System for the same purpose. (Tr. 116-120)

We are merely an originating and destination carrier and do not act as a bridge between other carriers. (Tr. 120)

(In reply to the Examiner) Our freight traffic that is 668 interchanged with the steam railroads generally moves on joint rates. The exhibit that I will file as No. 28 will show the proportion of the interchange traffic that moves intrastate and interstate. (Tr. 120)

Our line handles a closed pouch mail service, and we receive compensation for it on the basis fixed by the Interstate Commerce Commission for the payment of interurban railroads. We started handling mail in approximately 1919, and our rates have been fluctuating and changed with each new order of the Interstate Commerce Commission, fixing changes in mail pay rates for interurban railroads. And today we are operating under the interurban scale of pay as fixed by the Commission. This railroad was a party in the hearing before the Interstate Commerce Commission in regard to Electric Railway Mail Pay, reported 58 I.C.C. 455. It was subsequently, on rehearing, filed in 98 I.C.C. 737. (Tr. 121-122)

After the carrier had indicated that it desired a proposed report by the examiner and also oral argument before the division, the examiner announced that briefs might be filed by both sides on or before September 3, 1935, and closed the hearing. (Tr. 122)

21067 Defendant's Exhibit "A"

Interstate Commerce Commission

Railway Labor Act Docket No. 12

Utah Idaho Central Railroad Company

Submitted February 27, 1936. Decided March 18, 1936

The Utah Idaho Central Railroad Company's lines found not to constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of section 1 of the Railway Labor Act, as amended June 21, 1934.

J. H. DeVine, J. A. Howell, and David L. Stine for carrier.

Ezra Brainerd, Jr., and D. A. MacKenzie for labor organizations.

Report of the Commission

Division 3, Commissioners McManamy, Porter and Miller

McManamy, Commissioner:

This proceeding was instituted at the request of the
670 National Mediation Board to determine whether the Utah Idaho Central Railroad Company is exempt from the Railway Labor Act as amended June 21, 1934, under the provisio to the first paragraph of section 1 thereof, which reads as follows:

Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

A hearing has been held at which evidence was introduced on behalf of the above-named railroad company, which contends that it is exempted by the priviso quoted, and its witness was cross-examined by a representative of the Brotherhood of Railroad Trainmen. Briefs have been filed on behalf of the parties named together with the Railway Labor Executives' Association, which joined the Brotherhood of Railway Trainmen in

opposing the railroad company's contention. Exceptions were filed by the carrier to the report proposed by the examiner, and the parties were heard in oral argument.

The Railway Labor Act as amended June 21, 1934, provides for the prompt and orderly settlement of disputes between the carriers and their employees. The first paragraph of section 1 thereof defines the term "carrier" as including among others any carrier by railroad subject to the Interstate Commerce Act which is followed by the proviso hereinbefore quoted. There is no question that the Utah Idaho Central is a carrier by railroad subject to the Interstate Commerce Act, except such sections thereof as contain exemptions somewhat similar to that here under consideration. This railway is operated by electric power, and none of its stocks or bonds are owned by any steam railroad. The only issue therefore is whether it is a street, interurban, or suburban railway within the meaning of the proviso.

In the first case arising under this proviso in the Railway Labor Act, Texas Electric Ry., 208 I. C. C. 193, division 6 said at pages 194, 195:

The amended Railway Labor Act does not indicate the purpose of exempting the class of lines referred to in the proviso to the first section. No reason is apparent for distinguishing between steam and electric power, and the act does not purport to exempt all electric lines. There are other reasons which may have influenced Congress, but we think the fundamental reason was that the lines exempted are essentially local in character and largely disassociated from the steam-railroad systems. This belief is confirmed by reference to the Congressional hearings preceding the passage of this act and other acts containing similar exemptions, which hearings are referred to in the briefs and oral argument of both sides.

Previous to the passage of the amendment to the Railway Labor Act on June 21, 1934, this Commission had rendered numerous decisions regarding the status of particular electric lines under somewhat similar exemption provisions in certain sections of the Interstate Commerce Act and other acts which we administer. These decisions recognized the existence of a class of electric railways which are more than street, interurban, or suburban lines, and which are sometimes referred to

as commercial railways operated by electric power. Perhaps the best description of what constitutes a street, interurban, or suburban railway was given in Rules for Testing Other Than Steam Power Locomotives, 122 I. C. C. 414, where the Commission said at page 424:

"It is well known that electric cars were at first confined to street service in cities and towns. Gradually the lines were extended to the suburbs. Next came the idea of extending the lines from city to city. These three steps gave rise to the terms street, suburban, and interurban electric railways. These lines were limited almost exclusively to carriage of passengers. They were built largely upon streets and public highways. The only material difference between street, suburban, and interurban lines was the extent of the lines. If the line extended from city to city it was termed in interurban although handling the same traffic and being operated in substantially the same manner as the street or suburban line. We think this is the usual conception of the interurban line today.

"Obviously the character of the lines may change without a change in the name of the operating company. The record here shows that the name of a carrier, whether it is called a railroad, traction system, interurban railway, or power and light company, indicates nothing as to the character of the line or the nature of the traffic handled. We must look to the substance of the matter. A line which today extends only between two cities, and is dependent upon passenger traffic for the bulk of its revenues, might properly be termed an interurban line. In a period of years it might through natural development or consolidation become a railway comparable with our steam railroads and still retain its original name. It would no longer, however, be an interurban railway in substance and in fact. There would be a point, although not definitely defined, where the line passed beyond the true interurban."

The Utah Idaho Central extends from Ogden, Utah, north to Preston, Idaho, a distance of 94.63 miles, with two branch lines of approximately 7 and 14 miles respectively. It also has 36.93 miles of siding, spur, and yard tracks, making a total of 152.68 miles of track. All of this is within the State of Utah, except about 6 or 7 miles in Idaho, and with the exception of Preston the points herein mentioned are in Utah. The principal cities

served, with their populations, are Ogden 40,272, Brigham 5,093, Logan 9,979, and Preston 3,381, and 14 other cities or incorporated towns are served, having a population ranging from 275 to 2,353 each. Almost all of the line is in the Great Salt Lake Valley and the Cache Valley, which are largely agricultural sections separated by a part of the Wasatch Mountains. This railway closely parallels the main line of the Oregon Short Line Railroad Company for about 40 miles north of Ogden, and it parallels a branch of the same trunk line for most of the remaining distance to Preston. The number of employees averaged about 150 in 1934.

The history of the Utah Idaho Central and its predecessors began about 1890, when 3 or 4 miles of street railway in Ogden were operated with horse-drawn cars. This property was acquired by the Ogden Rapid Transit Company in the late nineties, which marked the beginning of its electrification, rehabilitation, and expansion. During the same period in the late nineties, the Ogden & Northwestern Railroad Company built a line from Ogden to Hot Springs, 9 miles, which it operated with a small steam locomotive. About 1910 that line was also acquired by the Ogden Rapid Transit Company, which equipped it for electrical operation and extended it to Brigham, 21 miles from Ogden. Contemporaneously with this development between Ogden and Brigham, the Logan Rapid Transit Company built a street railway in the city of Logan, together with lines to Smithfield, about 8 miles north, and to Wellsville, 12 miles south, of Logan, all operated with electric power. In 1914 the Ogden Rapid Transit Company and the Logan Rapid Transit Company were consolidated into one corporation, the Ogden, Logan & Idaho Railroad Company, which built a connecting line from Brigham north over the Collinston Divide to the southern terminus of the Logan Rapid Transit Company, and also extended the latter's line northward from Smithfield to Preston. In the latter part of 1919, the street-car operations in Ogden and a suburban operation into Ogden Canyon were segregated from the other lines and have since been operated by a separate corporation, the Utah Rapid Transit Company, which is not involved in this proceeding. The name of the Ogden, Logan & Idaho Railroad Company was later changed to the Utah Idaho Central Railroad Company, a Utah corporation, and in 1926 the latter was reorganized as the Utah Idaho Central Railroad Company, a *Delware* corporation. In recent

years the company has established and operates a motor-bus service parallel to its railway, and it has substituted motor busses for the local street-car service in Logan. The railway was practically entirely financed by citizens of northern Utah, who have to a large extent retained their interest therein, and many of the employees have remained the same through the various corporate changes.

Approximately 81.8 percent of the railway is located on privately owned right-of-way, and the remaining 18.2 percent is located on public streets or highways. The latter includes from 0.19 to 2.02 miles in each of 15 cities and towns, or a total of 14.1 miles, and 6.54 miles of the branch lines are on county roads. In many, if not most, instances the line passes through the cities and towns on their main business streets, and the terminal in Ogden is near the business center. Some of the franchises to use the streets and highways were granted for a street railway, an interurban, or a street and interurban railway to be operated with electricity, compressed air, or liquefied air as motive power, but more of them were granted for the operation of a double-track or single-track railroad, generally with a restriction against the use of steam or other motive power which might scatter sparks or fire. In a few instances the use of steam power was not specifically prohibited, and one franchise authorized its use for the first 25 years, which have now expired. In 1926 the franchises were generally amended to include operation as a common carrier by motor vehicle.

The tracks are of standard *gage* with 80 miles of 70-pound rail and 11 miles of 65-pound rail on the main line, 20 miles of 45 to 48 pound rail on the branches, and 26 miles of 48-pound rail on the sidings and spurs, the remainder varying from 40 to 85 pounds for comparatively short distances. The ties are 6 by 8 inches and 8 feet long, spaced 2 feet between centers, and only 11.3 miles of the main line are tie-plated. There are 70 places on the main line where the grade breaks or changes, which is an average of nearly one to every mile. The maximum grade is 44.77 percent for one tenth of a mile in the city of Logan, which is necessary to conform with the grade of the street. Outside of that, the maximum grade is 2 percent at several places for an aggregate of 18.9 miles, most of which is encountered in going over the Collinston Divide. The line makes a long circuit in going over the divide, and the sharpest curve on the main line

12°. The most difficult curves are on the spur tracks where, in at least two instances, there are 60° curves with a radius of 100 feet. On such curves it is often necessary to switch the largest box cars one at a time, but there is no restriction here or elsewhere against steam-railroad freight cars. Steam locomotives, however, could not safely operate over many of the sidings or spur tracks.

The passenger trains consist of either one or two cars, which are self-propelled, and in 1934 they averaged 1.1 cars per train. There are 73 places on 107 miles of line where stops are made for passengers, of which 52 are flag stops. The number of passengers carried in 1934 was 408,634, of which 175,599 were students going to and from centrally located schools at public expense. The passengers handled by train and bus are not shown separately, but in 1934 the number of busses operated averaged 4.1 per day compared with a daily average of 11.5 passenger trains. No interline tickets are sold except in connection with other electric railways operating in Utah. The average fare paid ranged from 29.6 cents in 1931 to 20.7 cents in 1934. The passenger revenues have declined every year since 1920, those for 1934 being $61,346.25 compared with $448,184.01 in 1920. This has been due primarily to the steadily increasing use of private automobiles, together with the construction of paved highways, particularly one which is 20 miles shorter than the railway between points in the Great Salt Lake Valley and the Cache Valley. The passenger trains carry baggage, mail, and express, which in 1934 yielded $39.48, $2,660.33, and $5,931.50 respectively.

The freight traffic consists to a large extent of raw products such as sugar beets, milk, tomatoes, and peas moving to factories, canneries, or processing plants, and the manufactured products moving outbound from such plants to connecting railroads. A considerable portion of the raw-products movement requires special service with 1-car or 2-car trains. A daily package merchandise train is maintained with facilities for refrigeration in summer and heating in winter and with pick-up and delivery service at all available points. In 1934 all of the freight trains averaged 6.2 cars each, and the number of trains per day ranged from an average of 4.4 in March to 14.7 in October with an average of 7.7 throughout the year. During the last half of 1934, this carrier handled 6,354 carloads of freight, of which 2,226 were local and 4,017 were interchanged with other car-

riers. Of the interchange traffic, 2,075 carloads moved to or from points in Utah and 1,942 to or from points in other States. The traffic originated on this carrier moved to points in 31 States and that delivered by it was from points in 26 States. The commodities originated in greatest volume were beets, sugar, potatoes, sand and gravel, milk, canned goods, tomatoes, sheep, cans, and cattle; and those delivered in greatest volume were beets, coal, sand gravel, and rock, gasoline, ties, lumber, and poles, and cans. This carrier is a party to practically all of the tariffs publishing through rates to or from this territory, and its interchange traffic generally moves on joint rates. It does not perform any intermediate service between other lines.

The carrier owns five 50-ton electric locomotives and two 35-ton electric locomotives, which are used to haul its freight trains. In addition it has three self-propelled cars which have been constructed and equipped for hauling package freight and can be used to pull other cars when necessary. The largest locomotives have factory ratings ranging up to 1,000 tons on the main line, but their practical ratings are generally 550 to 650 tons, or 12 to 14 cars averaging 45 tons each, except at two or three places where such ratings are only 5 to 8 cars up grade. A helper engine is occasionally used, but that is not the usual practice. A train of empties might have a larger number of cars, but it would be subject to air-brake limitations of 30 cars on the principal grades and 45 cars elsewhere. Four electric-power substations have capacities ranging from 500 to 1,000 tons of load on their respective sections of the line. The carrier also owns 100 gondola cars, 22 ballast cars, 18 box cars, 14 flat cars, 12 stock cars, and 7 refrigerator cars; but only 98 of the gondolas and 1 flat car are interchangeable with the steam railroads, and the gondolas were bought for local service. Practically all of the interchange traffic is therefore handled in standard equipment furnished by connecting railroads. Interchange connections are maintained with all of the trunk lines reaching Ogden, also with the Bamberger Electric Railroad Company at the same point, and with the Oregon Short Line at several other points. There are 84 sidings, spurs, or yard tracks with capacities ranging from 2 to 32 cars and averaging 16 cars.

Freight has always contributed a large proportion of the revenues since the completion of the line in 1915. The freight revenues have exceeded the passenger revenues in every year

since 1918, the former being more than double the latter in 1926 and 1927, more than three times in 1928 and 1929, more than four times in 1930 and 1931, more than five times in 1932, and more than six times in 1933 and 1934. During the last five years, from 1930 to 1934, inclusive, the freight revenues amounted to $2,021,724.57, and the revenues from passsengers, mail and express totalled $448,941.62, which amounts were approximately 81.9 and 18.1 percent of the total revenues, respectively. The freight revenues reached a peak in 1920 and a somewhat higher peak in 1928, since which they have generally declined but not so much as the passenger revenues.

The carrier compares its lines with the steam railroads in various respects. Although some of the steam railroads have as heavy or heavier grades in crossing the Rocky Mountains and the Sierra Nevada, grades and curves such as this carrier has are always avoided on the transcontinental lines wherever possible. It is admitted that steam railroads also operate along city streets in many places, including Ogden and Salt Lake City, Utah, but they do not use any main business streets in Utah cities. The average capacity of the sidings on this carrier's lines is much less than those on the trunk lines within 200 miles of Ogden, which range from an average of 86 to 114 cars on the various lines. The average length of its trains is also much less than those on the same trunk lines, which in 1934 averaged from 7 to 11 cars in passenger trains and from 45.1 to 63 cars in freight trains. The average cost of operation in 1934 for enginemen and trainmen on the lines of this carrier was 5.1 cents per car-mile in passenger service and 2.59 cents in freight service, which figures are compared with corresponding costs on the trunk lines ranging from 2.64 to 3.74 cents per car-mile in passenger service and from 0.57 to 1.12 cents in freight service. Similar comparisons are made with the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, where the average cost in 1929 for enginemen and trainmen in passenger service was 3.08 cents per car-mile on the electrified section and 4.82 cents on the portion operated with steam power, and the corresponding costs in freight service were 1.01 and 1.16 cents respectively. All of the carrier's comparisons were with trunk lines which handle a large amount of transcontinental freight and passenger business. It would be fairer to compare this carrier with steam railroads of similar size or with branch lines of the larger railroads. It is said that there

are no independent steam railroads of comparable size in Utah, but such railroads exist elsewhere, and there are undoubtedly branch lines in this same territory.

The carrier endeavors to distinguish its line from other electric railways which have been found not to be interurbans within the same exemption proviso of the Railway Labor Act in Texas Electric Ry., supra; Sacramento N. Ry., 208 I. C. C. 203; and Waterloo, C. F. & N. Ry., 208 I. C. C. 211. It is pointed out that the Texas Electric Railway performs an intermediate service between steam railroads, that the Sacramento Northern Railway is a subsidiary of the Western Pacific Railroad Company, and that the Waterloo, Cedar Falls & Northern Railway sells interline tickets, maintains off-line solicitors, and filed applications to issue securities under section 20a of the Interstate Commerce Act, which exempts interurbans. However, it does not appear that the physical characteristics of the Utah Idaho Central differ greatly from the above-mentioned electric railways, as disclosed by the reports cited. The maximum grades are 2 percent on the Texas Electric, 4.6 percent on the Sacramento Northern, and 6 percent on the Waterloo, Cedar Falls & Northern. Both the Texas Electric and the Waterloo, Cedar Falls & Northern have curves with a radius of 50 feet, and some of the curves on the Sacramento Northern are too sharp for steam locomotives. The percentage of this carrier's right-of-way that is located on public streets or highways is considerably greater than in the case of the Texas Electric and Sacramento Northern but slightly less than the Waterloo, Cedar Falls & Northern. The freight trains of the Utah Idaho Central average somewhat smaller than those of the other three carriers, but its freight revenue is a larger proportion of the total revenues than on any of the others.

The Utah Idaho Central is paid for carrying the mail at rates prescribed in Electric Railway Mail Pay, 58 I. C. C. 455, 98 I. C. C. 737, under an act applicable to "urban and interurban electric railway common carriers". The same is true of the other electric railways which have been found not to be interurbans within the exemption proviso in the Railway Labor Act, but the Commission has never determined the status of this or the other lines under the above-mentioned mail-pay act. During Federal control the Director General of Railroads

addressed a letter to the president of this carrier under date of June 29, 1918, which advised that: "Pursuant to the recommendation of the Regional Director, the Utah Idaho Central is relinquished from Federal control". Notwithstanding this letter, the carrier contends that it was never under Federal control, as no orders, directions, or benefits relative to such control were ever received. For the purposes of this proceeding, it is unnecessary to determine whether the carrier was under Federal control prior to June 29, 1918.

The carrier contends that the number, frequency, and smallness of its trains among other things stamp it as an interurban, but none of these were among the factors which division 6 said are the most important in determining whether an electric railway, is an interurban or commercial railway in Texas Electric Ry., supra, at page 202:

The Commission's views as to what constitutes an interurban were stated in Rules for Testing Other Than Steam Power Locomotives, supra. Those views should not be lightly departed from after Congress has authorized the Commission to determine the status of electric railways under a similar exemption provision in an act not otherwise administered by us. In harmony with that and similar decisions, we are of the opinion that an electric railway which is engaged in the general transportation of freight, whether the revenue therefrom is greater or less than its passenger revenue, which handles the bulk of such freight in standard equipment similar to that used by the steam railroads, which freely interchanges the same with the steam railroads for transportation to or from points on their lines, a considerable portion there being handled in interstate or foreign commerce, and which participates in joint rates with the steam railroads for interstate transportation, has more of the characteristics of a commercial railroad operated by electric power than of an interurban as that term is used in the exemption provision under consideration. Of course, there are many other circumstances and conditions which may have a bearing on the question, and some electric railways are of such an unusual character that their status might depend on other things, but we believe the factors referred to are generally the most important and should be given great weight where all of them exist together.

A petition to reopen that decision was denied by the Commission on May 13, 1935. This carrier's traffic complies in every respect with the above-described characteristics of a commercial railroad operated with electric power.

The Utah Idaho Central was found not to be a street, suburban, or interurban electric railway within a similar exemption provision of the Locomotive Inspection Act in Rules for Testing Other than Steam Locomotives, 122 I. C. C. 414. The appendix to that report shows that this carrier's freight revenues were less than double its passenger revenues during the years for which the figures were there given, 1923, 1924, and 1925, whereas the present record shows that its freight revenue was more than six times its passenger revenue in 1933 and 1934. Such previous decisions relating to the status of the same carrier under a similar exemption provision should not be lightly departed from in the absence of changed conditions, and such changes as have taken place with respect to this carrier tend to confirm and strengthen the conclusion that it is not a street, interurban, or suburban railway. See Sacramento N. Ry., supra, and Waterloo C. F. & N. Ry., supra.

In Piedmont & N. Ry. Co., 211 I. C. C. 4, decided October 11, 1935, division 3 said at page 8:

Previous to the amendment to the Railway Labor Act on June 21, 1934, this Commission had passed upon the status of numerous electric railways under more or less similar exemption provisions in other acts administered by us. Those decisions recognized a class of electric railways which were regarded as more than interurbans and were sometimes referred to as commercial railways operated by electric power. The distinction between them hinged largely upon the amount and character of freight business handled, an interurban being considered primarily a carrier of passengers and its freight traffic largely local. When Congress authorized this Commission to determine the status of electric railways under the Railway Labor Act, which is not otherwise administered by us, it is reasonable to suppose that it did so because of our experience in passing upon such questions under similar exemption provisions in other acts. This may also be regarded as a pretty good indication that Congress used the word "interurban" in the same sense as the Commission had interpreted that term in its decisions.

In all of the Commission's decisions dealing with the status of electric railways under the same and similar exemption provisions, it has never found one, which derived so large a proportion of its revenue from freight as this carrier does, to be an interurban.

We find that The Utah Idaho Central Railroad Company's lines do not constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of section 1 of the Railway Labor Act, as amended June 21, 1934.

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And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit, to wit:

*Order of submission*

Tenth Day, September Term, Monday, September 27th, A. D. 1937

Before Honorable Robert E. Lewis, Honorable Sam G. Bratton, and Honorable Robert L. Williams, Circuit Judges

This cause came on to be heard and was argued by counsel, Wendell Berge, Esquire, appearing for appellant Dan B. Shields; Nelson Thomas, Esquire, appearing for appellant Interstate Commerce Commission; J. A. Howell, Esquire, and Robert E. Quirk, Esquire, appearing for appellee.

Thereupon this cause was submitted to the court.

*Decree*

Thirty-second Day, January Term, Friday, April 1st, A. D. 1938

Before Honorable Robert E. Lewis and Honorable Orie L. Phillips, Circuit Judges

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be and the same is hereby affirmed.

United States Circuit Court of Appeals, Tenth Circuit

No. 1558—January Term, 1938

Dan B. Shields, Individually and as United States Attorney for the District of Utah, and the Interstate Commerce Commission, appellants

*vs.*

The Utah Idaho Central Railroad Company, appellee

Appeal from the District Court of the United States for the District of Utah

April 1, 1938

Wendell Berge, Special Assistant to the Attorney General (Robert H. Jackson, Assistant Attorney General, Leo. F. Tierney and Hugh B. Cox, Special Assistants to the Attorney General, and Robert L.

Stern, Special Attorney, were with him on the brief) for appellant Shields.

Nelson Thomas, Attorney (Daniel W. Knowlton, Chief Counsel, was with him on the brief) for appellant Interstate Commerce Commission.

J. A. Howell and Robert E. Quirk (J. H. DeVine, David L. Stine, C. D. Cass, and Neil R. Olmstead were with them on the brief) for appellee.

Before LEWIS, BRATTON, and WILLIAMS, Circuit Judges.

LEWIS, Circuit Judge, delivered the opinion of the court.

This case presents the issue whether appellee's railroad, on the procedure taken before the Interstate Commerce Commission prior to the institution of this suit or independently on the facts, was brought under and subjected to the Railway Labor Act of May 20, 1926 (44 State. 577), as amended by the Act of June 21, 1934 (48 Stat. 1185), in its relations to and its dealings with its employes. Heretofore its employes have never been members of railway brotherhoods on steam railroad lines. They have had their own labor organizations on appellee railroad and through them they have dealt with appellee as to wages, hours, and other conditions with which such organizations are usually concerned. That is true generally it seems with street, suburban, and interurban railroads. Appellee company claims to be an interurban electric railway company, and it and its predecessor have operated as such for approximately 20 years. It is a Delaware corporation. The termini of its railway are Ogden, Utah, on the south and Preston, Idaho, on the north. Its mainline between those points is about 95 miles. It has two short branches. It carries freight, baggage, express, and passengers. It passes through about fourteen towns and cities between Ogden and Preston. The four larger cities have a total population of 60,000. None of the others exceed 2,000. It runs frequent and rapid trains, both passenger and freight. It has restrictive franchises for its right to pass through the different towns and also franchises to operate on public highways in places. It has short sidings and spur tracks. It is standard gauge. It was built to develop and serve two valleys, a part of the Great Salt Lake Valley and the Cache Valley in northern Utah. It passes over the Wasatch Mountains to reach the Cache Valley and extends seven miles into Idaho. It makes frequent stops in serving the public in freight and passenger service, about one and a half miles apart on the average. Its owners built it to develop the resources of those valleys. Its grades and rails are not suited to steam railway trains. It and its owners have assisted in obtaining fruit and vegetable packing plants and canneries along its line. It has encouraged the production of sugar beets. It hauls these products to the plants and their output to steam railway lines for transportation to the general market. In summer some of its cars provide refrigeration and in winter heat. Its freight trains average six to seven cars, and its passenger trains less than two cars

Two high schools have buildings adjacent to its line, and it transports the students to and from them for a considerable distance. In 1926 it went into receivership in the United States District Court for Utah. A few years later it was taken out by reorganization and has since been operated in the same manner and in the same service that it had theretofore been operated. It was claimed and testified by those who have been closely connected with its operation for many years that it could not be operated as a steam railway without being reconstructed, and that it could not continue to operate as it had been operated with the additional burdens that would be placed upon it if it be made subject to the Railway Labor Act, because of those burdens. The record gives an exhaustive comparison between this road and steam railroads and expenses of operating them. Appellee's general manager for the past 15 years, who had held a position with the Southern Pacific for eight years before that, testified in great detail to increase in labor cost to appellee if its road should be brought under the Railway Labor Act. He said:

"It would be unfair and impractical, and in addition to that, your honor, if applied would have produced an increase in the labor bill that would prohibit us from continuing in existence."

Congress has full power of regulation over appellee. It has been an interstate carrier since the completion and operation of its road to Preston, Idaho. In its exercise of that power Congress may in its own judgment make different regulations applicable to interurban electric carriers from those applicable to steam carriers, or because of other material differences. It has done so, and that intention was exemplified in Section 1, First, of the Railway Labor Act. That section first gives a general definition of carriers subject to the Act, which is broad enough to include appellee, followed by the exempting proviso and then a grant of power to the Interstate Commerce Commission, thus:

"Provided, however, That the term 'carrier' shall not include any street, interurban, or suburban elect'ic railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

The last sentence just quoted, conferring power on the Commission, was not in the original Act of May 20, 1926. It was added by amendment in 1934. It is plain that before the amendment appellee was exempt from the Railway Labor Act, because it was not engaged in doing either of the things that would have made it subject to the

Act. It continued after amendment to be a "line operated by electric power" and was not "operating as a part of a general steam-railroad system of transportation" etc. The Interstate Commerce Commission so found in its report on the hearing which it granted on the request of the Mediation Board. Among other things it said (214 I. C. C. 708):

"This railway is operated by electric power, and none of its stocks or bonds are owned by any steam railroad. The only issue therefore is whether it is a street, interurban, or suburban railway within the meaning of the proviso."

It further said:

"It (appellee's railway) does not perform any intermediate service between other lines."

This exhausted its power. Specifically, its only power was to determine "whether any line operated by electric power falls within the terms of this proviso." The proviso was not changed by the amendment, except, if at all, by enlargement of the words "any street, interurban, or suburban electric railway" to "any line operated by electric power." But the Commission misconceived, we think, the extent of its power by proceeding further. It closed its report by this finding:

"that The Utah Idaho Central Railroad Company's lines do not constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragaph of section 1 of the Railway Labor Act, as amended June 21, 1934."

It did this on the proof before it that in the later years appellee's revenues for freight transportation had greatly exceeded its revenues for passenger transportation, and the Mediation Board accepted that finding as conclusive that appellee was thereupon brought under the Railway Labor Act in its relation with its employes. The Commission arrived at its conclusion solely on its own estimate of the facts and not because of any direct testimony that the line was not in fact an interurban electric railway. There was none, but there was direct, positive proof by at least one competent, qualified witness that it was at all times has been an interurban electric railway.

Thereafter appellee filed its bill in the court below against Dan B. Shields, United States Attorney for the District of Utah, in which it sought among other things a writ enjoining Shields from prosecuting it and its officers for claimed commission of crimes defined by the Railway Labor Act. The bill alleged that appellee brought the suit to prevent irreparable injury and damage to it and its business and property used in the transportation of persons and property and to restrain Shields individually and in his official capacity from threatened enforcement of fines and penalties under the Railway Labor Act; that appellee is engaged in the business of

operating as a common carrier an electric interurban line of railway between Ogden City, Utah, and Preston, Idaho, for the transportation of passengers, baggage, freight, and express between those points and intermediate points. There are allegations as to the construction of the road, first as street car lines in some of the cities through which it now passes and thereafter their acquisition, consolidation, and extension northward over the Wasatch Range to Preston, Idaho.

Those who undertook the venture were of that section. They also planned the location of canneries, processing plants for preserving vegetables and fruits for the market, and other developments of the two valleys.

Shields answered denying that the road is an interurban electric railway. He alleged that the Railway Labor Act creates a board known as the National Mediation Board and gives it certain powers, among them the power and duty to prescribe the form of notice to carrier employes as set out in Section 2, Eighth, of the Act, and that the board has prescribed the form of notice thus provided for, ordered that it be posted, and that if plaintiff-appellee fails to comply with said order and with certain other provisions of the Act it will be subject to prosecution for the penalties provided in the Act; that upon the request of that board proceedings were instituted before the Interstate Commerce Commission to determine whether appellee came within the provisio found in Section 1 of said Act; that the Commission had held a hearing on that request. Appellee was there represented and introduced evidence, and on March 18, 1936, the Commission handed down its decision in which it held that appellee's lines do not constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso"; that the Commission's determination is controlling unless made arbitrarily, is unreasonable or not based upon substantial evidence, and that the bill does not so allege; wherefore, he asked that injunctive relief be denied and the bill dismissed.

The Interstate Commerce Commission appeared in the District Court and filed petition to intervene as a defendant in the cause and to file answer and participate in the defense as fully as if named as a defendant. It was permitted to do so. The Commission alleged that pursuant to request of the Mediation Board made in accordance with the authority conferred on it by Section 1 of the Act as amended it instituted a proceeding for the purpose of determining whether the Utah Idaho Central Railroad Company was either a street, interurban, or suburban electric railway; that it accorded appellee a full hearing and a large volume of testimony was taken; that it determined the matter and served copy of its report on appellee; that its report contains its findings that appellee's line of railway does not constitute a street, interurban, or suburban electric railway within the meaning of the exemption; that its finding is supported by evidence; that it was not arbitrary, unjust, or contrary

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to the evidence or without evidence to support it; and that it did not exceed its authority. It denies certain allegations of unconstitutionality of the Act found in the bill.

The case went to trial in the District Court. At the close of the testimony, which was in substance a duplication of the testimony before the Commission, the Court made its findings of fact. A transcript of the testimony before the Commission was admitted in evidence before the Court. The Court reviewed the history of the road. It found that the resources of the territory traversed in the two valleys were wholly agricultural in character, and the only industrial development of which the territory has been and is capable is the construction and operation of processing plants to enable the products to reach the outside market, such as beet sugar factories, vegetable packing plants, milk condensing plants, pea canning plants, etc., and from the time of the construction of the interurban electric railway this industrial development has been fostered by collecting the raw products from the fields and delivering them to the processing plants located on its line, and delivering to those plants the necessary materials for such processing from outside the territory served by the plaintiff, such as coal, lime, etc., by transporting by means of its interurban the processed products from the processing plants and delivering them to the steam railroads for transportation to the outside markets; that by means of its interchange with steam railroads wholly as an initiating or receiving carrier without discrimination as to preference as to which steam railroad is used, plaintiff has also fostered the agricultural development of the territory by delivering to the farms such needed merchandise from the outside, and delivering from said farms to the outside market such agricultural products as could be marketed without being processed; that it has likewise fostered the social development of the territory by the transportation to and from the farms to the larger communities of people inhabiting the territory and especially in the transportation of the school children; that to meet these needs of the people appellee operates short, rapid trains run at frequent intervals and making frequent stops, in many instances where no agents are maintained, for the transportation of both passengers and freight, practically to and from the individual farms and to and from the processing plants and community centers to enable the products to reach the market either as raw or processed products; that the physical elements of plaintiff's railway, its motive power, its equipment, track construction, length of spurs and sidings, and its curvature and grades require operation peculiar to interurban electric railways, and that without a complete change of its physical elements and structures it could not be operated as steam railroads are commonly operated; that it is operated by electric power, known as an interurban railway, and ever since its construction it has been known as such; that it is not now and never has been operated as a part of a general steam railroad system of transportation, and never has been any part of the general steam system of transportation operated

by any other motive power; that none of its stocks or securities are owned by any steam-railroad system of transportation or steam railroad company, nor do any of the officers or agents of such a company have any control or voice whatever in its management or operation; that the Mediation Board has prescribed the form of notice provided for in the Eighth paragraph of Section 2 of the Railway Labor Act and ordered that it be posted as therein specified thereby demanding that all employes be thereby notified that all disputes between the carrier and them will be handled in accordance with the provisions of said Railway Labor Act; that plaintiff has not complied with said order and if plaintiff continues to fail to comply with said order and otherwise fails to comply with the provisions of said Act it will subject itself to prosecution for the penalties therein fixed, notwithstanding it is not as an electric interurban railway subject thereto; that if it does not comply it thereby admits that it is subject to the provisions of the Railway Labor Act and thus voluntarily submits itself thereto, and it will thus suffer immediate and irreparable injury and damage; that such compliance will result in demands for increase of wages and demands for rules and working conditions with respect thereto which the plaintiff is unable to grant because its financial condition will not permit it so to do without immediately impairing and ultimately destroying its ability to continue to operate and serve the public in the manner in which it has served it in the past; that plaintiff has never had any disputes with its employes which have not been amicably adjusted and notwithstanding it has continuously operated under contracts with organizations of its employes, which are independent of it, and in no wise under its control, as to pay, rules, and working conditions, because they will be influenced to abandon their present organizations and to join those organizations of employes on transcontinental steam railroads throughout the country on the promise that they will receive the higher or so-called steam railroad standard wages and the different so-called rules and working conditions prevailing thereon; that on the uncontradicted evidence in this cause as well as on the evidence before the Commission in its hearing the Court finds that plaintiff's railroad is operated by electric power, is known and is in fact, now and ever since its construction, has been an interurban electric railway as said term is used in and within the purview of said Railway Labor Act, and that the finding of the Commission that it is not such a railway is against and contrary to the law. The Court concluded as a matter of law that decree should go for plaintiff and directed the issuance of its writ permanently enjoining and restraining defendant Shields, both individually and as United States Attorney for the District of Utah, from initiating or prosecuting any suit or suits against the plaintiff, its officers, and agents based upon the alleged violation by them or any of them of any of the provisions of the said Railway Labor Act.

Paragraph Eighth of Section 2 provides that the carrier shall notify its employes by printed notices in such form and posted at such

times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employes will be handled in accordance with this Act, and in such notices there shall be printed verbatim in large type the Third, Fourth, and Fifth paragraphs of Section 2, thereby making them a part of the contract of employment between the carrier and its employes, and those paragraphs shall be a part of the agreement between employer and employes. The Tenth paragraph of said Section 2 makes it a misdemeanor on the part of the carrier, its officers, and agents to refuse and willfully fail to comply with the terms of the Third, Fourth, Fifth, Seventh, or Eighth paragraphs of the section, and upon conviction the carrier, its officers, or agents offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, and each day during which such carrier, its officers, or agents shall willfully fail or refuse to comply with the terms of said paragraph shall constitute a separate offense. It also makes it the duty of the District Attorney of the United States to prosecute such offenses on the application of the carrier's employes.

There is one other point to be noticed. When appellee's predecessor came out of receivership a few years ago it was reorganized and transferred to appellee company. To satisfy the indebtedness of the old company the new company issued its mortgage bonds to the amount of $2,000,000 and 20,000 shares of stock. The old company had made periodic reports to the Commission, and the new company informed it of its stock and bond issue. Correspondence ensued, and directions were given to it by the Commission as to the manner of keeping its accounts, particularly in readjusting them in the light of the accounts kept by the old company. The new securities were issued in the belief that it was an interurban electric railway. Had they been issued under Section 20a of the Interstate Commerce Act without the approval of the Commission, they would have been void. Paragraph (1) of said section provides:

"As used in this section the term 'carrier' means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) * * *."

See United States v. Chicago, N. S. & M. R. Co., 288 U. S. 1, 7, 13, 14. Nothing was said by the Interstate Commerce Commission in their correspondence upon the subject as to whether or not the securities of the new company could only be issued with its approval without being void. The Commission must have then been of the opinion that appellee was an interurban electric railway. The uncontradicted evidence shows that it has always been known as such by the public. In our opinion both law and equity are with appellee. Affirmed.

WILLIAMS, Circuit Judge, concurring.

In Deitch v. Staub (6th Cir.), 115 Fed. 309, Section 1 of Act of Legislature of Tennessee, March 23, 1883, was under consideration, which contained the following proviso:

"* * * provided, that this act shall in no way apply to or affect corporations where suits have already been brought to declare their charters void, and shall have no effect on any kind of litigation or suit now pending against such corporation, for any purpose. * * *."

In the opinion of the court by Circuit Judge Lurton, afterwards Justice of the Supreme Court of the United States, it is said:

"* * * The primary and usual office of a proviso is to except something out of a statute which would otherwise be within it. Its use is to take special instances out of a general class. Suth. St. Const. Sections 222, 223; Gibbons v. Ogden, 9 Wheat. 191, 6 L. Ed. 23. * * *"

The effect of the proviso to Section 1 of the Railway Labor Act is to except or exclude from the term "carrier" any street, interurban, or suburban electric railway, unless such railway is operated as a part of a general steam-railroad system of transportation, but not to exclude any part of the general steam-railroad system or transportation now or hereafter operated by any other motive power.

The inclusion of "any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power" and the confining of the Interstate Commerce Commission to determine "after hearing" as to whether "any line operated by electric power falls within the terms of this proviso" restricts the Commission in the determination whether the Utah-Idaho Central Railroad Company, a street, interurban, or suburban electric railway, was operated as a part of a general steam-railroad system of transportation.

I concur in Judge Lewis opinion affirming the judgment of the lower court.

Barrow, Circuit Judge, dissenting.

Section 1 of the Railway Labor Act as amended—48 Stat. 1185—defines the term carrier to include any express company, sleeping-car company, carrier by railroad subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad. Immediately thereafter is a proviso that the term thus defined shall not include a street, interurban, or suburban electric railway unless it is operated as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation then or thereafter operated by any other motive power. A provision follows that the Interstate Commerce Commission is authorized and directed upon request

of the Mediation Board or upon complaint of any party interested, to determine after hearing whether a line operated by electric power falls within the terms of the proviso. The eighth paragraph of section 2 provides that every carrier shall notify its employees by printed notices in such form and posted at such times and places as the Mediation Board shall specify that all disputes between the carrier and its employees will be handled in accordance with the terms of the act; and further that such notices shall contain verbatim the third, fourth, and fifth paragraphs of the section. The tenth paragraph provides that the willful failure or refusal of any carrier to comply with the terms of the third, fourth, fifth, seventh, and eighth paragraphs shall constitute a misdemeanor, and makes it the duty of any United States district attorney to whom a duly designated representative of the employees of a carrier may apply to institute and prosecute under the direction of the Attorney General necessary proceedings for the enforcement of the provision of the section.

Acting upon the request of the Mediation Board, proceedings were instituted before the Interstate Commerce Commission to determine whether plaintiff was an interurban electric railway within the meaning of the proviso contained in section 1. Following a full and fair hearing at which plaintiff was represented and introduced evidence, the Commission found and determined that the company was not such a railway. The Mediation Board then directed the company to post the formal notices prescribed in the eighth paragraph of section 2. It failed to comply with the order. Instead, it instituted this action against the United States attorney for the district of Utah, alleging at length that it was an interurban electric railway within the meaning of the exemption proviso and for that reason was not required to post the notices. It sought a declaratory judgment (1) that it was not a carrier as defined in the statute, but was an interurban electric railway, and (2) that it was not required to post the notices; and it sought an injunction restraining the United States attorney from instituting and prosecuting proceedings for violation of the act. The court found that, upon the evidence produced before the Commission, also upon the whole record made before the court, plaintiff was and is an interurban electric railway within the meaning of the exemption proviso; that the determination of the Commission that it was not such a railway was against and contrary to law; and that the United States attorney should be enjoined. But there was no express finding that the determination of the Commission was arbitrary, capricious, or unsupported by substantial evidence.

The Act of February 4, 1887, created the Commission and enumerated its functions. 24 Stat. 379. Section 14 provided that its findings made in connection with reparation due an injured party should be prima facie evidence of the facts found in any judicial proceeding; and section 16 provided that on a hearing in a judicial proceeding involving a lawful administrative order or requirement affecting

a carrier, the report of the Commission should be prima facie evidence of the matters therein stated. These sections were re-enacted without change in that respect in 1889—25 Stat. 855—and while they were in force the findings made in connection with administrative orders regulating rates, concerning discriminatory practices or other similar matters affecting carriers merely had prima facie effect in judicial proceedings. Cincinnati, New Orleans & Texas Pacific Ry. Co. v. Interstate Commerce Commission, 162 U. S. 184; Louisville & Nashville R. R. Co. v. Behlmer, 175 U. S. 648; Cincinnati, Hamilton & Dayton Ry Co. v. Interstate Commerce Commission, 206 U. S. 142 (154). But the language giving prima facie effect to the findings made in respect to such administrative orders was eliminated from Section 16 when it was amended in 1906. 34 Stat. 584. And no identical or similar provision has found its way into later enactments.

The effect of a finding made by the Commission since that change is not open to doubt. It is held by repeated decisions that determination of fact relating to rates, discriminatory practices, and similar matters affecting carriers is conclusive upon the courts if supported by substantial evidence, unless the action transcends the authority of the Commission or presents some other fatal irregula Interstate Commerce Commission v. Delaware L. & W. R. R., 220 U. S. 235; Interstate Commerce Commission v. Union Pacific R. R., 222 U. S. 541; Interstate Commerce Commission v. Louisville & Nashville R. R., 227 U. S. 88; Atchison, Topeka, & Santa Fe Ry. Co. v. United States, 232 U. S. 199; Los Angeles Switching Case, 234 U. S. 294; United States v. Louisville & Nashville R. R., 235 U. S. 314; Pennsylvania Co. v. United States, 236 U. S. 351; Manufacturers Ry. Co. v. United States, 246 U. S. 457; Skinner & Eddy Corp. v. United States, 249 U. S. 557; Seaboard Air Line Ry. Co. v. United States, 254 U. S. 57; New England Divisions Case, 261 U. S. 184 (203); Western Paper Makers' Chemical Co. v. United States, 271 U. S. 268; Virginian Railway v. United States, 272 U. S. 658; Standard Oil Co. v. United States, 283 U. S. 235; Florida v. United States, 292 U. S. 1 (12). A finding made by the Secretary of Agriculture concerning maximum rates for stockyards has like binding effect. That results from section 316 of the Packers and Stockyards Act as amended—42 Stat. 159, 7 U. S. C. A. 217—which provides that suits to restrain or annul orders of the Secretary are governed by the provisions relating to review of orders of the Interstate Commerce Commission. St. Joseph Stock Yards Co. v. United States, 298 U. S. 38. It is further settled that since the Shipping Act closely parallels the Interstate Commerce Act, each having created an administrative agency to whose informed judgment Congress committed the determination of questions of fact on the basis of which the making of administrative orders is authorized, a finding made by the Secretary of Commerce after the authority to administer the Shipping Act had been legally transferred to him is similarly binding. Swayne & Hoyt, Ltd., v. United States, 300 U. S. 297.

The Interstate Commerce Commission is an administrative body
long experience in dealing with rates, classifications, discrimina
practices and other cognate matters relating to carriers engaged
interstate commerce. Congress enacted the Railway Labor Act wi
knowledge of that experience, and of the fact that the findings of th
Commission made in connection with orders affecting such questio
were conclusive upon the courts if supported by evidence, unless th
action went beyond the authority of the Commission. With that
background, Congress committed the determination of the questio
whether a railway is an electric interurban within the meaning of the
exemption proviso in section 1, to the well informed judgment and
recognized discretion of that administrative agency. It certainly
was not the legislative intent that the determination should be utterly
impotent and without effect when challenged by a dissatisfied carrier
in a judicial proceeding to restrain the institution and prosecution
of authorized actions for refusal to comply with the act after the
determination has been made. No such idle and fruitless consequence
should be lightly ascribed to the deliberate finding made upon care-
ful examination and sifting of the facts by an informed agency of
recognized discernment in that field, especially in wide departure
from the effect of findings made by the agency under other enact-
ments. On the contrary, the designation of the Commission as the
agency to make the determination upon request of the Mediation
Board or upon the complaint of any interested party, with require-
ment for a hearing, evinces a clear legislative intent by necessary
implication that the determination should be conclusive unless it is
arbitrary, capricious, or unsupported by substantial evidence, or the
proceedings fall outside the authority of the Commission. Any other
conclusion would be in sharp conflict with the recognized doctrine
that a determination of facts made after hearing by an administra-
tive agency clothed with power shall be final if supported by substan-
tial evidence.

Where judicial review is invoked to determine whether a deter-
mination of the Commission or other administration agency con-
stitutes the confiscation of property, the courts will exercise their
independent judgment, but even in such circumstances appropriate
regard should be given to the finding. St. Joseph Stock Yards Co.
v. United States, supra. No question of that kind is involved here.
The determination of the Commission was merely one of classifica-
tion. Rates were not reduced, property was not valued, fair return
was not fixed, and no other action of that kind was taken. The
order of the Mediation Board merely directed the company to post
the notices; it did not constitute confiscation of property. For that
reason the case does not call for application of the rule requiring
the exercise of the independent judgment of the court upon the
question of fact submitted to the Commission.

Was the finding of the Commission arbitrary, or capricious, or made
without substantial evidence to support it? The evidence pre-

caused little conflict. The line extending from Ogden to Preston is 84.3 miles in length, with two branches of approximately 7 and 14 miles, respectively. There are 36.93 miles of siding, spur, and yard tracks, making a total of 152.68 miles of standard gauge trackage, with 89 miles of 70-pound rail and 11 miles of 65-pound rail on the main line, 20 miles of 45 to 48-pound rail on the branches, and 26 miles of 48-pound rail on the sidings and spurs, the remainder varying from 40 to 85 pounds for comparatively short distances. The ties are 6 by 8 inches and 8 feet in length, spaced 2 feet between centers, and 11.3 miles of the main line are tie-plated. There are 9 places on the main line at which the grade breaks or changes. Outside the City of Ogden, the maximum grade is two per cent at several places for an aggregate of more than 18 miles, most of which is encountered in going over the Collinston Divide near the state line. The line makes a long circuit in going over the divide, and the sharpest curve on the main line is 12°. There are some curves on the spur tracks of 60° with a radius of 100 feet, and it is often necessary to switch the largest box cars one at a time on such curves, but there is no restriction there or elsewhere on steam-railroad freight cars. Steam locomotives could not operate safely over many of the sidings or spur tracks. The carrier owns five 50-ton and two 75-ton electric locomotives which are used to haul its trains. It also has three self-propelled cars which have been constructed and equipped for hauling package freight and can be used to haul other cars when necessary. The larger locomotives have practical ratings usually of 550 tons to 650 tons, which means that they can haul 12 to 14 cars averaging 45 tons each, except at two or three places where such ratings are only 5 to 8 cars upgrade. A helper engine is used occasionally, but that is not the usual practice. Electric power is purchased, and the company owns and uses four substations having capacities ranging from 500 to 1,000 tons of load on their respective sections of the line. The company owns 100 gondola cars, 2 ballast cars, 18 box cars, 14 flat cars, 12 stock cars, and 7 refrigerator cars; but only 98 of the gondola cars and 1 flat car are interchangeable with steam railroads. Most of the interchangeable traffic is handled in standard equipment furnished by connecting railroads. Interchange connections are maintained with all trunk lines reaching Ogden, with the Oregon Short Line at several places, and with the Bamberger Railroad Company at Ogden. The principal cities served, with their respective populations, are Ogden, 40,272, Brigham, 5,093, Logan, 9,979, Preston, 3,381, and 14 other cities or incorporated towns having a population ranging from 275 to 2,353. Eighteen per cent of the trackage lies in public roads or public streets. These thoroughfares are occupied under county and municipal franchises which in varying language provide that the motive power shall be electric energy and they contain other interurban limitations. The balance of the trackage is on private right-of-way. The line traverses the Great Salt Lake Valley and the Cache

Valley, being agricultural sections. The passenger trains consist of one or two cars which are self-propelled; and they averaged 1.1 cars per train in 1934. Stops are made at 73 places for passengers, of which 52 are flag stops. The average capacity of its sidings is less; the length of its trains less; the number and frequency of trains greater; the cost of operation for enginemen and trainmen more; the grades heavier; and the curves sharper than those of steam railroads. During recent years the company has operated motorbus service parallel to its railway. In 1934, 408,634 passengers were carried, of whom 175,599 were students going to or returning from centrally located schools. The number of passengers transported by rail and the number by bus are not shown separately, but the daily average of trains was 11.5 and the daily average of busses was 4.1. The average fare paid ranged from 29.6 cents in 1931 to 20.7 cents in 1934. The passenger revenues declined every year since 1920. They were $448,184.01 in 1920, and only $61,346.25 in 1934, the reduction being due primarily to increased use of automobiles and paved highways. Interline tickets are not sold except in connection with other electric railways in Utah. Revenues from transporting baggage, mail, and express in 1934 were $39.48, $2,660.30, and $5,931.50, respectively. The freight traffic consists to a very large extent in the transportation of sugar beets, milk, potatoes, and peas, moving to factories, canneries, or processing plants, and manufactured products outbound from such plants to connecting railroads. In 1934 the freight trains averaged 6.2 cars each, and the number of trains per day averaged 7.7. During the last half of that year, 6,354 carloads of freight were handled, 2,226 being local and 4,017 being interchanged with other carriers. Of the interchange traffic, 2,075 carloads moved to or from points in Utah, and 1,942 to or from points in other states. Traffic originating on the system moved to points in 31 states and traffic delivered to the company came from points in 26 states. Freight revenues have greatly exceeded passenger revenues in every year since 1918. They were twice greater in 1926, three times greater in 1928 and 1929, four times greater in 1930 and 1931, five times greater in 1932, and more than six times greater in 1933 and 1934. In 1930 to 1934, inclusive, freight revenues were approximately 81.9 per cent and passenger revenues 18.1 per cent of the total revenues. The company is a party to practically all of the tariffs publishing through rates to or from that territory, and its interchange traffic generally moves on joint rates, but it does not perform any intermediate service between other lines. It had an average of 150 employees during the year 1934.

The Interstate Commerce Commission had occasion to determine in at least two instances prior to the enactment of the Railway Labor Act whether a given railroad was an electric interurban. It held that while other elements should be given appropriate weight, one of the major factors in making the determination is the ratio of revenue derived from the transportation of passengers to that derived

from the hauling of freight, and that ordinarily where the latter substantially exceeds the former the railroad should not be classed as an electric interurban within the meaning of the Interstate Commerce Act. In re Proposed Control of Sacramento Northern Railway by W. P. R. R., 71 I. C. C. 653; Id. 79 I. C. C. 782; In re Application of Section 15a to Electric Rys., 86 I. C. C. 751. It must be assumed that Congress was familiar with these determinations and acquiesced in them when it provided in the Railway Labor Act that the Commission should determine upon request of the Mediation Board whether a given railroad was an electric interurban within the purview of the exemption proviso.

The question presented in Piedmont & Northern Ry. v. Interstate Commerce Commission, 286 U. S. 299, was whether the company was an interurban electric railway. Its standard gauge tracks were constructed of 80-pound rails. Slightly more than two per cent of the trackage was located in city streets and the balance was on private right-of-way; and the line usually went around cities rather than through them. The company owned 17 electric locomotives ranging in weight from 55 to 100 tons, and 287 freight cars which were regularly interchanged with steam railroads. Approximately eighty-five per cent of the total investment in equipment represented expenditures for locomotives and interchangeable freight cars used exclusively for the transportation of freight. Foreign line freight equipment of every kind flowed freely over the road. Freight trains usually consisted of 40 to 50 cars; and by doubling, 65 cars could be drawn in a train. Through and local freight trains were operated in the same manner as those of steam railroads. The company filed individual tariffs and it was a party to others. From the outset its freight revenues were large, while its passenger traffic progressively decreased. During the year ending June 30, 1929, its freight revenues were 94.5 per cent and its passenger revenues were 2.9 per cent of its total revenues. For 1929, 4.3 per cent of the total freight revenue arose from local freight and 95.7 per cent from interline freight. More than 80 per cent of the freight moving over its line was interstate and less than 20 per cent intrastate. It was held that the railway was of such importance in interstate commerce and rendered a service which was so predominantly devoted to the handling of interstate freight, and competed to such an extent with steam trunk line that it could not be said to be an interurban within the meaning of the provision in the Interstate Commerce Act in question. The controlling features which define an electric interurban and distinguish it from other types of carriers were delimited and blueprinted in this language:

"No difficulty is encountered in defining a street or a suburban electric railway. These are essentially local, are fundamentally passenger carriers, are to an inconsiderable extent engaged in interstate carriage, and transact freight business only incidentally and

in a small volume. The record indicates that prior to 1920 such street or suburban railways had grown in many instances so as to link distinct communities, and that in addition so-called interurban lines were constructed from time to time, to serve the convenience of two or more cities. But the characteristics of street or suburban railways persisted in these interurban lines. They also were chiefly devoted to passenger traffic and operated single or series self-propelled cars. Many of them carried package freight, some also transported mail, and still fewer carload freight picked up along the line or received for local delivery from connecting steam railroads. It is clear that the phrase 'interurban electric railway' was not, in 1920, commonly used to designate a carrier whose major activity was the transportation of interstate freight in trains of standard freight cars. It cannot be said, therefore, that if a railway is operated by electricity and extends between cities paragraph (22) clearly and unequivocally exempts it from the Commission's jurisdiction."

It was held in United States v. Chicago North Shore & Milwaukee R. R. Co., 288 U. S. 1, that the carrier was an electric interurban within the meaning of section 20a of the Interstate Commerce Act, but there fast electric passenger traffic was the primary function of the carrier. Freight business was secondary and subsidiary when measured by car service and gross earnings. In 1930 and for several years prior thereto, about three-fourths of its revenue came from passenger traffic and about one-fourth from freight. The main terminals served only passenger and merchandise freight traffic. No facilities were maintained at the termini in Chicago and Milwaukee for receipt and delivery of carload freight. Connections for the interchange of such freight were provided outside those industrial centers. The facts there were substantially and decisively different from those presented here.

The majority takes notice of the fact that agencies of the government have treated the company as an interurban electric road. The method of accounting prescribed for railways of that kind has been used without complaint from the Interstate Commerce Commission. The company sold an issue of bonds without securing approval of the Commission and no protest was made; and the Postmaster General has dealt with it as such a railway in respect to the transportation of mail. But administrative classification touching other matters is not decisive, Piedmont & Northern Ry. Co. v. United States, supra; and inconsistency of the finding in question with those made on other occasions is not controlling. Virginian Ry. Co. v. United States, supra.

The finding of the Commission was not arbitrary, or capricious, or made without substantial evidence to support it. It is, therefore, conclusive upon the courts. The decree should be reversed.

United States Circuit Court of Appeals, Tenth Circuit

*Clerk's certificate*

I, Albert Trego, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify that the foregoing contains a full, true, and complete copy of the transcript of the record from the District Court of the United States for the District of Utah, and full, true, and complete copies of certain pleadings, record entries and proceedings, including the opinion (except full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said Circuit Court of Appeals No. 1558, wherein Dan B. Shields, Individually and as United States Attorney for the District of Utah et al. were appellants and The Utah Idaho Central Railroad Company was appellee, as full, true, and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 12th day of April, A. D. 1933.

[SEAL]

ALBERT TREGO,
*Clerk of the United States Circuit Court of Appeals, Tenth Circuit.*

By E. OLIVER CHRISTIANSON,
*Deputy Clerk.*

Supreme Court of the United States

*Order allowing certiorari*

Filed May 31, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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